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

13 In the Matter of the Accusation Against:

Case No. 79/16-18469

14 **DOUGLAS S. DEEM,**  
15 **dba J & M SMOG & AUTO**  
16 **31200 Highway 74**  
17 **Homeland, CA 92548**

**A C C U S A T I O N**

18 **Automotive Repair Dealer Registration No.**  
19 **ARD 243037**  
20 **Smog Check Station License No. RC 243037**

21 **DOUGLAS SHERMAN DEEM**  
22 **1451 River Stone Ct.**  
23 **Hemet, CA 90545**

24 **Smog Check Inspector License No. EO**  
25 **153686**  
26 **Smog Check Repair Technician License No.**  
27 **EI 153686**

28 **CAITLIN JEAN MILLER**  
**25839 2nd St.**  
**Hemet, CA 92544**

**Smog Check Inspector License No. EO**  
**632292**  
**Smog Check Repair Technician License No.**  
**EI 632292**

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **Douglas S. Deem, dba J & M Smog & Auto**

6 2. In 2005, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer  
7 (ARD) Registration Number ARD 243037 to Douglas S. Deem, aka Douglas Sherman Deem  
8 (Respondent Deem or Deem), dba J & M Smog & Auto. The Automotive Repair Dealer  
9 Registration was in full force and effect at all times relevant to the charges brought herein and  
10 will expire on December 31, 2018, unless renewed.

11 3. On or about March 15, 2006, the Bureau issued Smog Check Station License Number  
12 RC 243037 to Respondent Deem. The Smog Check Station License was in full force and effect at  
13 all times relevant to the charges brought herein and will expire on December 31, 2018, unless  
14 renewed.

15 4. In 2006, the Director issued Advanced Emission Specialist Technician License  
16 Number EA 153686 to Deem. Deem's advanced emission specialist technician license was  
17 expired and was cancelled on November 30, 2012. Pursuant to California Code of Regulations,  
18 title 16, section 3340.28, subdivision(e), the license was renewed, pursuant to Deem's election, as  
19 Smog Check Inspector License No. EO 153686, effective November 30, 2012.<sup>1</sup> The Smog Check  
20 Inspector License was in full force and effect at all times relevant to the charges brought herein  
21 and will expire on November 30, 2020, unless renewed.

22 5. On or about December 17, 2012, the Bureau issued Smog Check Repair Technician  
23 License Number EI 153686 to Deem. The Smog Check Repair Technician License was in full  
24 force and effect at all times relevant to the charges brought herein but expired on November 30,  
25 2018, and has not been renewed.

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



1 13. H&S Code section 44072.8 provides that when a license has been revoked or  
2 suspended following a hearing under this article, any additional license issued under this chapter  
3 in the name of the licensee may be likewise revoked or suspended by the Director.

4 **STATUTORY PROVISIONS**

5 14. Section 118 of the Code states in pertinent part:

6 (b) The suspension, expiration, or forfeiture by operation of law of a license issued  
7 by a board in the department, or its suspension, forfeiture, or cancellation by order of  
8 the board or by order of a court of law, or its surrender without the written consent of  
9 the board, shall not, during any period in which it may be renewed, restored, reissued,  
10 or reinstated, deprive the board of its authority to institute or continue a disciplinary  
11 proceeding against the licensee upon any ground provided by law or to enter an order  
12 suspending or revoking the license or otherwise taking disciplinary action against the  
13 licensee on any such ground.

14 (c) As used in this section, "board" includes an individual who is authorized by any  
15 provision of this code to issue, suspend, or revoke a license, and "license" includes  
16 "certificate," "registration," and "permit."

17 15. Section 477 of the Code states:

18 (a) "Board" includes "bureau," "commission," "committee," "department,"  
19 "division," "examining committee," "program," and "agency."

20 (b) "License" includes certificate, registration or other means to engage in a business  
21 or profession regulated by this code.

22 16. Section 9884.7 of the Code states in pertinent part:

23 (a) The director, where the automotive repair dealer cannot show there was a bona  
24 fide error, may deny, suspend, revoke, or place on probation the registration of an  
25 automotive repair dealer for any of the following acts or omissions related to the  
26 conduct of the business of the automotive repair dealer, which are done by the  
27 automotive repair dealer or any automotive technician, employee, partner, officer, or  
28 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.

///

1 17. Section 44002 of the H&S Code provides, in pertinent part, that the Director has all  
2 the powers and authority granted under the Automotive Repair Act for enforcing the Motor  
3 Vehicle Inspection Program.

4 18. Section 44012 of the H&S Code states in pertinent parts:

5 The test at the smog check stations shall be performed in accordance with procedures  
6 prescribed by the Bureau . . . The department shall ensure, as appropriate to the test  
method, the following:

7 (a) Emission control systems required by state and federal law are reducing excess  
8 emissions in accordance with the standards adopted pursuant to subdivisions (a) and  
(c) of Section 44013.

9 ...

10 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and  
11 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile  
organic compound emissions, in accordance with procedures prescribed by the  
12 Bureau.

13 ...

14 (f) A visual or functional check is made of emission control devices specified by the  
15 department . . . The visual or functional check shall be performed in accordance with  
procedures prescribed by the Bureau.

16 19. Section 44014 of the H&S Code states in pertinent part:

17 (a) Except as otherwise provided in this chapter, the testing and repair portion of the  
18 program shall be conducted by smog check stations licensed by the department, and  
by smog check technicians who have qualified pursuant to this chapter.

19 20. Section 44015 of the H&S Code states in pertinent part:

20 (a) A licensed smog check station shall not issue an electronic smog certificate of  
21 compliance, except as authorized by this chapter, to any vehicle that meets the  
following criteria:

22 (1) A vehicle that has been tampered with.

23 ...

24 (b) If a vehicle meets the requirements of Section 44012, a Smog Check Station  
25 Licensed to issue certificates shall issue an electronic smog certificate of compliance  
or a certificate of noncompliance.

26 21. Section 44032 of the H&S Code states:

27 No person shall perform, for compensation, tests or repairs of emission control  
28 devices or systems of motor vehicles required by this chapter unless the person  
performing the test or repair is a qualified smog check technician and the test or

1 repair is performed at a licensed smog check station. Qualified technicians shall  
2 perform tests of emission control devices and systems in accordance with Section  
3 44012.

4 22. Section 44035, subdivision (a), of the H&S Code states in pertinent part:

5 A smog check station's license or a qualified smog check technician's qualification  
6 may be suspended or revoked by the department, after a hearing, for failure to meet or  
7 maintain the standards prescribed for qualification, equipment, performance, or  
8 conduct.

9 23. Section 44072.2 of the H&S Code states, in pertinent part:

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

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

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

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

19 ...

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

21 ...

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

24 24. Section 44072.6 of the H&S Code provides, in pertinent part, that the expiration or  
25 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
26 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
27 of jurisdiction to proceed with disciplinary action.

28 25. H&S Code section 44072.10 states, in pertinent part:

(c) The department shall revoke the license of any smog check technician or station  
licensee who fraudulently certifies vehicles or participates in the fraudulent inspection  
of vehicles. A fraudulent inspection includes, but is not limited to, all of the  
following:

...

(2) Tampering with a vehicle emissions control system or test analyzer system.

1 (3) Tampering with a vehicle in a way that would cause it to falsely pass or falsely  
2 fail an inspection.

3 (4) Intentional or willful violation of this chapter or any regulation, standard, or  
4 procedure of the department implementing this chapter . . .

5 **REGULATIONS**

6 26. California Code of Regulations, title 16 (Regulation(s)), section 3340.15 states in  
7 pertinent part:

8 A smog check station shall meet the following requirements for licensure and shall  
9 comply with these requirements at all times while licensed.

10 . . .

11 (b) . . . Testing and/or repairing of vehicles pursuant to the Smog Check Program  
12 shall be performed by a licensed inspector and/or repair technician, consistent with  
13 their license classification.

14 . . .

15 (e) The station shall make, keep secure, and have available for inspection on request  
16 of the bureau, or its representative, legible records showing the station's transactions  
17 as a licensee for a period of not less than three years after completion of any  
18 transaction to which the records refer. All records shall be open for reasonable  
19 inspection and/or reproduction by the bureau or its representative. Station records  
20 required to be maintained shall include copies of:

21 (1) All certificates of compliance and certificates of noncompliance in stock and/or  
22 issued,

23 (2) Repair orders relating to the inspection and repair activities, and

24 (3) Vehicle inspection reports generated either manually or by the emissions  
25 inspection system. . . .

26 27. Regulation section 3340.24, subdivision (c), states:

27 (c) The bureau may suspend or revoke the license of or pursue other legal action  
28 against a licensee, if the licensee falsely or fraudulently issues or obtains an electronic  
smog certificate of compliance or a certificate of noncompliance.

29 28. Regulation section 3340.30 states in pertinent part:

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

32 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012  
33 of the Health and Safety Code, section 44035 of the Health and Safety Code, and  
34 section 3340.42 of this article.

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(d) Upon expiration of the inspector and/or repair technician license immediately cease to inspect, test, or repair failed vehicles, as applicable.

29. Regulation section 3340.35 states in pertinent part:

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

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

30. Regulation section 3340.41 states in pertinent part:

(b) No person shall enter into the BAR-97 Emissions Inspection System or the OBD Inspection System any access or qualification number other than as authorized by the bureau, nor in any way tamper with the BAR-97 Emissions Inspection System or the OBD Inspection System.

31. Regulation section 3340.42 states in pertinent part:

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

...

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

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

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

32. Regulation section 3340.45 states in pertinent part:

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

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

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1 33. Regulation section 3373 states:

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

#### 8 **COST RECOVERY**

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

#### 13 **UNDERCOVER OPERATION #1: 1991 JEEP**

14 35. On October 28, 2016, the Bureau conducted an undercover operation with a 1991  
15 Jeep (Jeep) at Deem's facility. The Jeep had a gap in the hose between the fuel tank and the pipe  
16 going to the vent orifice on the Jeep's EVAP canister, which created a gross leak that would  
17 cause the Jeep to fail the Low Pressure Fuel Evaporative Tester (LPFET) functional test<sup>2</sup> which is  
18 required as part of a smog check inspection.

19 36. The Bureau's undercover operator drove to Deem's facility and asked for a smog  
20 inspection of the 1991 Jeep. Deem provided a written estimate to perform the smog check. The  
21 operator remained in the customer waiting room during the test. He observed that Deem did not  
22 leave the office, but could not see who performed the test. The operator observed Respondent  
23 Miller hand Deem some paperwork related to the test.

24 37. The operator was informed that the Jeep passed inspection, he paid for the smog  
25 check and certificate, and was given documentation including a Vehicle Inspection Report (VIR)  
26 and a Certificate of Compliance. The VIR was signed by Deem, and the VIR indicated that the  
27 inspection was performed by Deem himself and listed Deem's Smog Check Inspector License

28 <sup>2</sup> The LPFET test is performed on 1995 and older vehicles. During the smog check, the  
Fuel Evaporative Test machine is connected to the vehicle and tests the integrity of the vehicle's  
fuel evaporative system. The Fuel Evaporative Test machine gives a result of pass or fail, which  
the technician enters into the BAR-97 Emissions Inspection System (EIS).

1 number EO 153686. The VIR claimed that a LPFET test was performed with a passing result, and  
2 that the fuel cap passed visual and functional tests. Likewise, the data sent to the Bureau's  
3 Vehicle Information Database (VID) for the Jeep's smog check indicated that the fuel cap visual,  
4 fuel cap functional test<sup>3</sup> and LPFET test were all performed with passing results, and that Deem  
5 was the inspector who performed the inspection.

6 38. Videotaped surveillance revealed that the Jeep's fuel door was never opened during  
7 the smog check, and that the LPFET equipment was not connected to the Jeep during the smog  
8 check. The fuel cap is inside the fuel door, and it has to be removed to test the functional fuel cap  
9 leak-down test. Video surveillance revealed that Respondent Miller was the technician who  
10 performed the Jeep's smog check. Her license had expired on June 30, 2016, and was not  
11 renewed until December 2, 2016.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 39. Respondent Deem's registration is subject to disciplinary action pursuant to Code  
15 section 9884.7, subdivision (a)(1), in that Deem made or authorized statements which he knew or  
16 in the exercise of reasonable care should have known to be untrue or misleading as follows:  
17 Deem certified that he had inspected the Jeep, but the inspection was performed by Miller; he  
18 certified that visual and functional tests of the fuel cap had been performed, but the fuel door to  
19 the fuel cap was never opened; and he certified that the Jeep had passed the LPFET test, but it  
20 was never performed.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 40. Respondent Deem's registration is subject to disciplinary action pursuant to Code  
24 section 9884.7, subdivision (a)(4), in that Deem committed acts which constitute fraud by issuing  
25 an electronic smog certificate of compliance for the Jeep without performing bona fide inspection  
26 and testing of the emission control devices and systems on the vehicle; and by falsely claiming

27 <sup>3</sup> The functional test of the fuel cap involves removing it from the vehicle and connecting  
28 it to a fuel cap receptacle on the smog machine which pressurizes the system to determine if any  
pressure is lost through the cap.

1 that he, a licensed inspector, had performed the smog check, thereby depriving the People of the  
2 State of California of the protection afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 41. Respondent Deem's Smog Check Station License is subject to disciplinary action  
6 pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent Deem failed to  
7 comply with provisions of the Code, as follows:

8 a. **Section 44012, subdivision (d):** Deem failed to perform the LPFET functional test  
9 on the Jeep.

10 b. **Section 44012, subdivision (f):** Deem failed to perform a visual inspection to ensure  
11 that a fuel cap was in place on the Jeep and failed to perform a fuel cap functional test on the  
12 Jeep, in accordance with procedures prescribed by the Bureau.

13 c. **Sections 44014, subdivision (a) and 44032:** Deem failed to use a qualified smog  
14 check technician to test the Jeep, because Miller's Smog Check Inspector License had expired on  
15 June 30, 2016, and was not renewed until December 2, 2016.

16 d. **Section 44015, subdivision (a):** Deem issued an electronic smog certificate of  
17 compliance for the Jeep without properly testing and inspecting it to determine if it was in  
18 compliance with H&S Code section 44012.

19 e. **Section 44072.2, subdivision (f):** By certifying that he had performed testing and  
20 inspection of the Jeep, Deem aided and abetted Miller in evading the requirements of sections  
21 44012 and 44032 that testing and inspection be performed by a qualified technician.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 42. Respondent Deem's Smog Check Station License is subject to disciplinary action  
25 pursuant to H&S Code section 44072.2, subdivision (c), in that Deem failed to comply with  
26 provisions of the Regulations, as follows:

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28 ///

1 a. **Section 3340.15, subd. (b):** Deem allowed Miller, an unqualified technician whose  
2 Smog Check Inspector License had expired on June 30, 2016, to perform a smog check of the  
3 Jeep using his inspector license identification.

4 b. **Section 3340.24, subdivision (c):** Deem falsely or fraudulently issued an electronic  
5 smog certificate of compliance for the Jeep.

6 c. **Section 3340.35, subdivision (c):** Deem issued an electronic smog certificate of  
7 compliance for the Jeep without inspecting and testing the Jeep in accordance with H&S Code  
8 section 44012 and Regulation section 3340.42.

9 d. **Section 3340.41, subdivision (b):** Deem permitted Miller to access the Bureau's  
10 Emissions Inspection System for the Jeep's smog check using Deem's inspector license  
11 identification.

12 e. **Section 3340.42, subdivision (b):** Deem failed to conduct required visual and  
13 functional inspections on the Jeep in accordance with the Bureau's specifications.

14 f. **Section 3340.45, subdivision (a):** Respondent Deem failed to conduct the Jeep's  
15 smog check in accordance with the requirements of the Smog Check Manual.

16 g. **Section 3373:** Respondent Deem created a false and misleading record by issuing an  
17 electronic smog certificate of compliance that falsely stated the Jeep had passed a smog  
18 inspection, and falsely stating that he had performed the smog check.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

21 43. Respondent Deem's Smog Check Station License is subject to disciplinary action  
22 pursuant to H&S Code section 44072.2, subdivision (d), in that Respondent Deem committed a  
23 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog  
24 certificate of compliance for the Jeep without performing the required visual inspection of the  
25 fuel cap and without performing required functional tests of emission control devices and systems  
26 on the vehicle, and concealing the fact that an unlicensed inspector had performed the smog  
27 check, thereby depriving the People of the State of California of the protection afforded by the  
28 Motor Vehicle Inspection Program.

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 44. Respondent Deem's Smog Check Inspector License and Smog Check Repair  
4 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
5 subdivision (a), in that Respondent Deem failed to comply with provisions of the Code, as  
6 follows:

7 a. **Section 44012, subdivision (d):** Deem failed to perform the LPFET functional test  
8 on the Jeep.

9 b. **Section 44012, subdivision (f):** Deem failed to perform a visual inspection to ensure  
10 that a fuel cap was in place on the Jeep and failed to perform a fuel cap functional test on the  
11 Jeep, in accordance with procedures prescribed by the Bureau.

12 c. **Sections 44014, subdivision (a) and 44032:** Deem failed to use a qualified smog  
13 check technician to test the Jeep, because Miller's Smog Check Inspector License had expired on  
14 June 30, 2016, and was not renewed until December 2, 2016.

15 d. **Section 44072.2, subdivision (f):** By certifying that he had performed testing and  
16 inspection of the Jeep, Deem aided and abetted Miller in evading the requirements of sections  
17 44012 and 44032 that testing and inspection be performed by a qualified technician.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 45. Respondent Deem's Smog Check Inspector License and Smog Check Repair  
21 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
22 subdivision (c), in that Deem failed to comply with provisions of the Regulations, as follows:

23 a. **Section 3340.24, subdivision (c):** Deem falsely or fraudulently issued an electronic  
24 smog certificate of compliance for the Jeep.

25 b. **Section 3340.30, subdivision (a):** Deem failed to conduct the Jeep's smog check in  
26 accordance with the applicable statutory and regulatory requirements.

27 ///

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1 c. **Section 3340.41, subdivision (b):** Deem permitted Miller to access the Bureau's  
2 Emissions Inspection System for the Jeep's smog check using Deem's inspector license  
3 identification.

4 d. **Section 3340.42, subdivision (b):** Deem failed to conduct required visual and  
5 functional inspections on the Jeep in accordance with the Bureau's specifications.

6 e. **Section 3340.45, subdivision (a):** Deem failed to conduct the Jeep's smog check in  
7 accordance with the requirements of the Smog Check Manual.

8 f. **Section 3373:** Deem created a false and misleading record by issuing an electronic  
9 smog certificate of compliance that falsely stated the Jeep had passed a smog inspection, and  
10 falsely stating that he had performed the smog check.

11 **EIGHTH CAUSE FOR DISCIPLINE**

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

13 46. Respondent Miller's Smog Check Inspector License and Smog Check Repair  
14 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
15 subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

16 a. **Section 44012, subdivisions (d) and (f):** Miller failed to perform the required visual  
17 inspection of the Jeep's fuel cap and failed to perform required functional tests of the Jeep, in  
18 accordance with procedures prescribed by the Bureau.

19 b. **Sections 44014, subdivision (a) and 44032:** Miller inspected and tested the Jeep  
20 when she was not a qualified smog check technician because her Smog Check Inspector License  
21 had expired on June 30, 2016, and was not renewed until December 2, 2016.

22 **NINTH CAUSE FOR DISCIPLINE**

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

24 47. Respondent Miller's Smog Check Inspector License and Smog Check Repair  
25 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
26 subdivision (c), in that Miller failed to comply with the Regulations, as set forth below:

27 a. **Section 3340.24, subdivision (c):** Miller caused an electronic smog certificate of  
28 compliance to be falsely or fraudulently issued for the Jeep.





1 the fuel cap was never opened; and he certified that the Toyota had passed the fuel cap leak down  
2 and LPFET tests, but they were never performed.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 54. Respondent Deem's registration is subject to disciplinary action pursuant to Code  
6 section 9884.7, subdivision (a)(4), in that Deem committed acts which constitute fraud as follows:  
7 Deem issued an electronic smog certificate of compliance for the Toyota without performing a  
8 bona fide inspection and test of the emission control devices and systems on the vehicle, and  
9 falsely claiming that he, a licensed inspector, had performed the smog check, thereby depriving  
10 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
11 Program.

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

14 55. Respondent Deem's Smog Check Station License is subject to disciplinary action  
15 pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent Deem failed to  
16 comply with provisions of the Code, as follows:

17 a. **Section 44012, subdivision (d):** Deem failed to, and failed to perform the LPFET  
18 functional test on the Toyota.

19 b. **Section 44012, subdivision (f):** Deem failed perform a visual inspection to ensure  
20 that a fuel cap was in place on the Toyota, and failed to a fuel cap leak down test on the Toyota,  
21 in accordance with procedures prescribed by the Bureau.

22 c. **Sections 44014, subdivision (a) and 44032:** Deem failed to use a qualified smog  
23 check technician to test the Toyota, because Miller's Smog Check Inspector License had expired  
24 on June 30, 2016, and was not renewed until December 2, 2016.

25 d. **Section 44015, subdivision (a):** Deem issued an electronic smog certificate of  
26 compliance for the Toyota without properly testing and inspecting it to determine if it was in  
27 compliance with H&S Code section 44012.

28 ///

1 e. **Section 44072.2, subdivision (f):** By certifying that he had performed testing and  
2 inspection of the Toyota, Deem aided and abetted Miller in evading the requirements of sections  
3 44012 and 44032 that testing and inspection be performed by a qualified technician.

4 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

6 56. Respondent Deem's Smog Check Station License is subject to disciplinary action  
7 pursuant to H&S Code section 44072.2, subdivision (c), in that Deem failed to comply with  
8 provisions of the Regulations, as follows:

9 a. **Section 3340.15:** Deem allowed Miller, an unqualified technician whose smog check  
10 inspection license had expired on June 30, 2016, to perform a smog check of the Toyota.

11 b. **Section 3340.24, subdivision (c):** Deem falsely or fraudulently issued an electronic  
12 smog certificate of compliance for the Toyota.

13 c. **Section 3340.30, subdivision (a):** Deem failed to inspect and test the Toyota in  
14 accordance with H&S Code sections 44012 and 44035, and Regulation section 3340.42.

15 d. **Section 3340.30, subdivision (d):** Despite expiration of Respondent Miller's Smog  
16 Check Inspector License, Deem allowed Miller to inspect and test the Toyota using his Smog  
17 Check Inspector License identification.

18 e. **Section 3340.35, subdivision (c):** Deem issued an electronic smog certificate of  
19 compliance for the Toyota without inspecting and testing the Toyota in accordance with H&S  
20 Code section 44012 and Regulation section 3340.42.

21 f. **Section 3340.41, subdivision (b):** Deem permitted Miller to access the Bureau's  
22 Emissions Inspection System for a smog check of the Toyota using Deem's inspector license.

23 g. **Section 3340.42, subdivision (b):** Deem failed to conduct required visual and  
24 functional inspections on the Toyota.

25 h. **Section 3340.45, subdivision (a):** Deem failed to conduct the Jeep's smog check in  
26 accordance with the requirements of the Smog Check Manual.

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1 i. **Section 3373:** Deem created a false and misleading record by issuing an electronic  
2 smog certificate of compliance that falsely stated the Toyota had passed a smog check, and  
3 falsely stating that he had performed the smog check.

4 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

6 57. Respondent Deem's Smog Check Station License and his Smog Check Inspector  
7 License are subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (d),  
8 in that Respondent Deem committed a dishonest, fraudulent or deceitful act whereby another is  
9 injured, as follows: Respondent Deem issued an electronic smog certificate of compliance for the  
10 Toyota without performing the required visual inspection of the fuel cap and without performing  
11 required functional tests of emission control devices and systems on the vehicle, and concealing  
12 the fact that an unlicensed inspector had performed the smog check, thereby depriving the People  
13 of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

14 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

16 58. Respondent Deem's Smog Check Inspector License and Smog Check Repair  
17 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
18 subdivision (a), in that Respondent Deem failed to comply with provisions of the Code, as  
19 follows:

20 a. **Section 44012, subdivision (d):** Deem failed to perform the LPFET functional test  
21 on the Toyota.

22 b. **Section 44012, subdivision (f):** Deem failed to perform a visual inspection to ensure  
23 that a fuel cap was in place on the Toyota and failed to perform a fuel cap functional test on the  
24 Toyota, in accordance with procedures prescribed by the Bureau.

25 c. **Sections 44014, subdivision (a) and 44032:** Deem failed to use a qualified smog  
26 check technician to test the Toyota, because Miller's Smog Check Inspector License had expired  
27 on June 30, 2016, and was not renewed until December 2, 2016.

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1 d. **Section 44072.2, subdivision (f):** By certifying that he had performed testing and  
2 inspection of the Toyota, Deem aided and abetted Miller in evading the requirements of sections  
3 44012 and 44032 that testing and inspection be performed by a qualified technician.

4 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

6 59. Respondent Deem's Smog Check Inspector License and Smog Check Repair  
7 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
8 subdivision (c), in that Deem failed to comply with provisions of the Regulations, as follows:

9 a. **Section 3340.24, subdivision (c):** Deem falsely or fraudulently issued an electronic  
10 smog certificate of compliance for the Toyota.

11 b. **Section 3340.30, subdivision (a):** Deem failed to conduct the Toyota's smog check  
12 in accordance with the applicable statutory and regulatory requirements.

13 c. **Section 3340.41, subdivision (b):** Deem permitted Miller to access the Bureau's  
14 Emissions Inspection System for the Toyota's smog check using Deem's inspector license  
15 identification.

16 d. **Section 3340.42, subdivision (b):** Deem failed to conduct required visual and  
17 functional inspections on the Toyota in accordance with the Bureau's specifications.

18 e. **Section 3340.45, subdivision (a):** Deem failed to conduct the Toyota's smog check  
19 in accordance with the requirements of the Smog Check Manual.

20 f. **Section 3373:** Deem created a false and misleading record by issuing an electronic  
21 smog certificate of compliance that falsely stated the Toyota had passed a smog inspection, and  
22 falsely stating that he had performed the smog check.

23 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

25 60. Respondent Miller's Smog Check Inspector License and Smog Check Repair  
26 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
27 subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

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1 a. **Section 44012, subdivisions (d) and (f):** Miller failed to perform the required visual  
2 inspection of the Toyota's fuel cap and failed to perform required functional tests on the Toyota,  
3 in accordance with procedures prescribed by the Bureau.

4 b. **Sections 44014, subdivision (a) and 44032:** Miller inspected and tested the Toyota  
5 when she was not a qualified smog check technician, because her Smog Check Inspector License  
6 had expired on June 30, 2016, and was not renewed until December 2, 2016.

7 **NINETEENTH CAUSE FOR DISCIPLINE**

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

9 61. Respondent Miller's Smog Check Inspector License and Smog Check Repair  
10 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
11 subdivision (c), in that Miller failed to comply with the Regulations, as follows:

12 a. **Section 3340.24, subdivision (c):** Miller caused an electronic smog certificate of  
13 compliance to be falsely or fraudulently issued for the Toyota.

14 b. **Section 3340.30, subdivision (a):** Miller failed to inspect and test the Toyota in  
15 accordance with H&S Code sections 44012 and 44035, and Regulation section 3340.42.

16 c. **Section 3340.30, subdivision (d):** Despite expiration of her Smog Check Inspector  
17 License, Respondent Miller inspected and tested the Toyota.

18 d. **Section 3340.35, subdivision (d):** Respondent Miller was unqualified because her  
19 Smog Check Inspector License had expired on June 30, 2016, but she performed a smog check  
20 and caused an electronic smog certificate of compliance to be issued for the Toyota.

21 e. **Section 3340.41, subdivision (b):** Respondent Miller falsely accessed the Bureau's  
22 Emissions Inspection System and reported inspection and test results for the Toyota using Deem's  
23 inspector license, as if Deem had performed the smog check.

24 f. **Section 3340.42, subdivision (b):** Respondent Miller failed to conduct required  
25 visual and functional inspections of the Toyota.

26 g. **Section 3340.45, subdivision (a):** Miller failed to conduct the Toyota's smog check  
27 in accordance with the requirements of the Smog Check Manual.

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1 h. **Section 3373:** Miller created a false and misleading record by issuing an electronic  
2 smog certificate of compliance that falsely stated that the Toyota had been given visual and  
3 functional tests, that the Toyota passed a smog inspection, and that Deem performed the smog  
4 check.

5 **TWENTIETH CAUSE FOR DISCIPLINE**

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

7 62. Respondent Miller's Smog Check Inspector License and Smog Check Repair  
8 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
9 subdivision (d), in that Miller committed dishonest, fraudulent or deceitful acts whereby another  
10 is injured by issuing an electronic smog certificate of compliance for the Toyota without  
11 performing bona fide inspection and testing of the emission control devices and systems on the  
12 vehicles, and claiming that Respondent Deem had had performed the smog check when Miller  
13 had done it as an unlicensed inspector, thereby depriving the People of the State of California of  
14 the protection afforded by the Motor Vehicle Inspection Program.

15 **UNDERCOVER OPERATION #3: 1992 PLYMOUTH**

16 63. On February 8, 2017, the Bureau conducted an undercover operation at Respondent  
17 Deem's facility involving the Bureau's 1992 Plymouth (Plymouth). The Plymouth's fuel tank  
18 pressure relief/rollover valve hose was disconnected, which would cause the Plymouth to fail the  
19 LPFET functional test which is required as part of a smog check inspection.

20 64. The Bureau's undercover operator arrived at Deem's facility and asked for a smog  
21 inspection of the Plymouth. The operator was given a written estimate for the inspection.

22 65. The operator was informed that the Plymouth passed inspection, he paid for the smog  
23 check and certificate, and was given documentation including a VIR and a Certificate of  
24 Compliance. The VIR showed that the smog check was performed by Respondent Miller, and that  
25 she entered a "pass" for the LPFET functional tests. Likewise, the data sent to the Bureau's VID  
26 for the Plymouth's smog check indicated that those tests were performed with passing results.

27 66. Videotaped surveillance revealed that Miller removed and reinstalled the Plymouth's  
28 fuel cap, but did not connect the LPFET equipment during the smog check.

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**TWENTY-FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

67. Respondent Deem’s registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Deem made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:  
Deem certified that the Plymouth had passed the LPFET test, but that test was never performed on the Plymouth.

**TWENTY-SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

68. Respondent Deem’s registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Deem committed acts which constitute fraud as follows:  
Deem issued an electronic smog certificate of compliance for the Plymouth without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

**TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

69. Respondent Deem’s Smog Check Station License is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that Deem failed to comply with provisions of the Code, as follows:

a. **Section 44012, subdivision (f):** Deem failed to ensure that the emission control tests were performed on the Plymouth in accordance with procedures prescribed by the Bureau.

b. **Section 44015, subdivision (a):** Deem issued an electronic smog certificate of compliance for the Plymouth without properly testing and inspecting it to determine if it was in compliance with H&S Code section 44012.

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1 by failing to perform required functional tests on the Plymouth in accordance with procedures  
2 prescribed by the Bureau.

3 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

5 73. Respondent Miller's Smog Check Inspector License and Smog Check Repair  
6 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
7 subdivision (c), because Miller failed to comply with the Regulations, as follows:

8 a. **Section 3340.24, subdivision (c):** Miller caused an electronic smog certificate of  
9 compliance to be falsely or fraudulently issued for the Plymouth.

10 b. **Section 3340.30, subdivision (a):** Miller failed to inspect and test the Plymouth in  
11 accordance with H&S Code sections 44012 and 44035, and Regulation section 3340.42.

12 c. **Section 3340.42, subdivision (b):** Miller failed to conduct required functional  
13 inspections on the Plymouth.

14 d. **Section 3340.45, subdivision (a):** Miller failed to conduct the Plymouth's smog  
15 check in accordance with the requirements of the Smog Check Manual.

16 e. **Section 3373:** Miller created a false and misleading record by issuing an electronic  
17 smog certificate of compliance that falsely stated that the Plymouth had been given visual and  
18 functional tests and it passed a smog inspection.

19 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

21 74. Respondent Miller's Smog Check Inspector License and Smog Check Repair  
22 Technician License are subject to disciplinary action pursuant to H&S Code section 44072.2,  
23 subdivision (d), in that Miller committed dishonest, fraudulent or deceitful acts whereby another  
24 is injured by issuing an electronic smog certificate of compliance for the Plymouth without  
25 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
26 thereby depriving the People of the State of California of the protection afforded by the Motor  
27 Vehicle Inspection Program.

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1 **OTHER MATTERS**

2 75. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,  
3 or may invalidate temporarily or permanently, the registrations for all places of business operated  
4 in this state by Respondent Douglas S. Deem, a.k.a. Douglas Sherman Deem, upon a finding that  
5 said Respondent Deem has, or is, engaged in a course of repeated and willful violations of the  
6 laws and regulations pertaining to an automotive repair dealer.

7 76. Pursuant to H&S Code section 44072.8, if Smog Check Station License Number RC  
8 243037, issued to Respondent Douglas S. Deem, dba J & M Smog & Auto, is revoked or  
9 suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the H&S  
10 Code in his name may be likewise revoked or suspended by the Director.

11 77. Under H&S Code section 44072.8, if Smog Check Inspector License Number EO  
12 153686 or Smog Check Repair Technician License Number EI 153686 issued to Respondent  
13 Deem is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of  
14 Division 26 of the H&S Code in his name may be likewise revoked or suspended by the Director.

15 78. Under H&S Code section 44072.8, if Smog Check Inspector License Number EO  
16 632292 or Smog Check Repair Technician License Number EI 632292 issued to Respondent  
17 Caitlin Jean Miller is revoked or suspended, any additional license issued under  
18 Chapter 5 of Part 5 of Division 26 of the H&S Code in her name may be likewise revoked or  
19 suspended by the Director.

20 **PRAYER**

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

- 23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
24 243037 issued to Douglas S. Deem, dba J & M Smog & Auto;
- 25 2. Revoking or suspending any other Automotive Repair Dealer Registration issued to  
26 Douglas S. Deem;
- 27 3. Revoking or suspending Smog Check Station License Number RC 243037 issued to  
28 Douglas S. Deem, dba J & M Smog & Auto;

- 1           4.    Revoking or suspending Smog Check Inspector License Number EO 153686 issued  
2 to Douglas Sherman Deem;
- 3           5.    Revoking or suspending Smog Check Repair Technician License Number EI 153686  
4 issued to Douglas Sherman Deem;
- 5           6.    Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
6 Division 26 of the H&S Code in the name of Douglas S. Deem, aka Douglas Sherman Deem.
- 7           7.    Revoking or suspending Smog Check Inspector License Number EO 632292 issued  
8 to Caitlin Jean Miller;
- 9           8.    Revoking or suspending Smog Check Repair Technician License Number EI 632292  
10 issued to Caitlin Jean Miller;
- 11          9.    Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
12 Division 26 of the H&S Code in the name of Caitlin Jean Miller.
- 13          10.   Ordering Douglas S. Deem and Caitlin Jean Miller to pay the Bureau the reasonable  
14 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 15          11.   Taking such other and further action as deemed necessary and proper.

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18 DATED: March 21, 2019 

19 PATRICK DORAIS  
20 Chief  
21 Bureau of Automotive Repair  
22 Department of Consumer Affairs  
23 State of California  
24 *Complainant*

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