

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

In the Matter of the Accusation Against:

THE AUTO & TIRE DOCTOR, INC.
JOHN LAMOREUX, President
12000 Pioneer Trail
Truckee, CA 96162

Automotive Repair Dealer Registration
No. ARD 251206
Smog Check Station License
No. RC 251206

Respondent.

Case No. 79/09-52

OAH No. 2009060820

DECISION

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

This Decision shall become effective 2/18/10.

IT IS SO ORDERED this 30th day of December, 2009.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

Administrative Law Judge (ALJ) Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Sacramento, on November 2, 2009.

Jeffrey M. Phillips, Deputy Attorney General, represented Sherry Mehl (complainant), Chief of the Bureau of Automotive Repair (BAR or bureau).

John Lamoreux, President, appeared on behalf of The Auto & Tire Doctor, Inc. (respondent).

The matter was submitted for decision on November 2, 2009.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.

License History

2. On July 24, 2007, the Director of Consumer Affairs (Director) issued Automotive Repair Dealer (ARD) Registration No. ARD 251206 to respondent, with John

Lamoreux as president. The ARD registration was current and in effect at all times pertinent herein, and will expire, unless renewed, on June 30, 2010.

3. On April 1, 2004, the Director issued Smog Check Station License No. RC 251206 to respondent. The license was current and in effect at all times pertinent herein, and will expire, unless renewed, on June 30, 2010.

4. On October 18, 1984, the Director issued ARD registration No. ARD 113440 to respondent's president, John Lamoreux, sole owner, doing business as Auto Doctor. Auto Doctor was originally located at 10925 West River Street, Truckee, California 96162. Effective July 26, 2005, Auto Doctor moved to 12000 Pioneer Trail, Truckee, California 6161, where respondent is currently located. ARD registration No. ARD 113440 was cancelled on July 25, 2007.

5. On October 18, 1984, the Director issued Smog Check Station License No. RC 113440 to respondent's president, John Lamoreux, as sole owner of Auto Doctor. Smog Check Station License No. RC 113440 was cancelled on July 25, 2007.

Background

6. There are three components to a smog inspection: (1) visual inspection of a vehicle's emission components to ensure that they are present, properly connected, and in good working condition; (2) functional testing of each component that is required to be functionally tested, depending on the make of the vehicle; and (3) a tail pipe emissions test to ensure that the vehicle's emissions are reading at or below acceptable levels. A vehicle must pass all three components before an Emission Inspection Certificate of Compliance may be issued.

7. As part of its efforts to enforce provisions of the Smog Check Program, BAR conducts "undercover runs," in which an undercover operator brings a state-owned vehicle to a licensed smog check station for testing. The vehicle has a documented induced defect that will cause the vehicle to fail a properly performed smog test.

8. Kenn Besson is employed as a Program Representative in the BAR's Sacramento Field Office. He is responsible for enforcing the laws and regulations pertaining to smog inspections and repairs, including undercover vehicle operations. Mr. Besson organized the undercover operations at respondent's facility in 2008.

9. As the ARD and smog check station licensee, respondent is responsible for the actions of its employees, and has an independent obligation to ensure that laws and regulations pertaining to the Smog Check Program were complied with at his facility.

Undercover Operation #1

10. David Mummert is employed by the BAR as a Program Representative in the BAR's Sacramento Documentation Lab. As part of his job duties, Mr. Mummert prepares undercover vehicles for smog inspections and inspects those cars after they are returned.

11. On April 11, 2008, Mr. Mummert prepared a 1990 Plymouth Sundance, California license number 2RYS238, (Sundance) for an undercover run. The required emissions control systems for this vehicle included, among other things, a thermostatic air cleaner (ACL) system, which a technician is required to visually inspect during the course of a California Emissions Inspection Test. Mr. Mummert photographed the thermostatic air cleaner tube intact on the air cleaner assembly. He also photographed the underhood emission control information label, with the vacuum diagram showing that an ACL system is required on this vehicle.

Mr. Mummert conducted a California Emissions Inspection Test, which the Sundance passed. Mr. Mummert then removed the thermostatic air cleaner hot air tube, which connects from the heat stove to the air cleaner assembly. After making this change, Mr. Mummert performed another California Emissions Inspection Test, and the Sundance failed the visual portion of the test due to the missing hot air tube. Mr. Mummert photographed the removed hot air tube. He also photographed the area on the engine where the hot air tube was removed, as well as the connection on the air cleaner where the hot air tube normally connects.

12. On April 17, 2008, Mr. Mummert released the Sundance to Mr. Besson, who visually verified that the hot air tube for the thermostatic air cleaner had been removed from the vehicle. Mr. Besson released the vehicle to a BAR undercover operator, who drove the vehicle to a prearranged location in Truckee, California. At that prearranged location, Mr. Besson photographed the area of the missing hot air tube in the Sundance. The undercover operator then drove the vehicle to respondent's facility and requested a smog inspection, using the alias "Ronnie Brooks." The operator did not sign a work order or receive a written estimate for the inspection. Respondent's employee, technician Stanton Saengpradap, performed the inspection, signed a Smog Check Vehicle Inspection Report (VIR), and issued electronic Certificate of Compliance No. MY660211C, certifying that the Sundance was in compliance with applicable laws and regulations. The operator paid \$68.25 for the smog inspection and certificate. He received copies of an invoice and VIR.

13. The VIR included a section entitled "Emission Control Systems Visual Inspection/Functional Check Results." The VIR explained that the "Visual/Functional tests are used to assist in the identification of oxides of nitrogen, crankcase and cold start emission [sic] which are not measured during the idle tests." During the inspection, a test analyzer prompts the technician to inspect a list of items. The technician must respond to the prompt by entering on the screen either pass, fail, missing or modified. One of the items on the Visual Inspection/Functional Check test is "Thermostatic Air Cleaner." The VIR completed

by respondent's technician and provided to the operator stated "N/A.," indicating that a thermostatic air cleaner was not applicable to the Sundance.

14. After paying for the smog inspection, the operator returned the Sundance to Mr. Besson, who took another photograph of the engine, which showed the area where the hot air tube was missing for the thermostatic air cleaner.

15. On April 17, 2008, respondent authorized statements which, in the exercise of reasonable care, it should have known to be untrue or misleading, by issuing electronic Certificate of Compliance No. MY660211C for the Sundance, certifying that the vehicle had passed the inspection and was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the smog inspection required by Health and Safety Code section 44012 because the vehicle's thermostatic air cleaner hot air tube was missing.

16. On April 17, 2008, respondent committed acts constituting fraud,¹ and committed a dishonest act whereby another is injured, by issuing electronic Certificate of Compliance No. MY660211C for the Sundance 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.

17. Respondent failed to comply with Business and Professions Code section 9884.9, subdivision (a),² in a material respect, in that respondent failed to obtain the operator's authorization for the smog inspection on the Sundance, in that respondent failed to have the operator sign a work order.³ Furthermore, respondent failed to provide the operator with a written estimate for parts and/or labor necessary for the smog inspection. (Finding 12.)

18. In connection with the smog test performed on the Sundance on April 17, 2008, respondent failed to comply with the Health and Safety Code in the following respects:

¹ Civil Code section 1573 defines "constructive fraud" and states, in pertinent part:

CONSTRUCTIVE FRAUD. Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;...

² Business and Professions 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...."

³ California Code of Regulations, title 16, section 3303, subdivision (j), states: "'Authorization' means consent. Authorization shall consist of the customer's signature on the work order, taken before repair work begins. Authorization shall be valid without the customer's signature only when oral or electronic authorization is documented in accordance with applicable sections of these regulations."

A. Respondent, through its employee, failed to perform emission control tests on the vehicle in accordance with prescribed procedures, as required by Health and Safety Code section 44012, subdivision (f).⁴

B. Respondent issued electronic Certificate of Compliance No. MY660211C for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012, as required by Health and Safety Code section 44015, subdivision (b).⁵

19. In connection with the smog test performed on the Sundance on April 17, 2008, respondent failed to comply with provisions of the California Code of Regulations, title 16, in the following respects:

A. Respondent falsely issued electronic Certificate of Compliance No. MY660211C for the vehicle, in that it could not pass the smog inspection because the vehicle's thermostatic air cleaner hot air tube was missing, in violation of California Code of Regulations, title 16, section 3340.24, subdivision (c).⁶

B. Respondent issued electronic Certificate of Compliance No. MY660211C for the vehicle, even though the vehicle had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42,

⁴ Health and Safety Code section 44012, subdivision (f), states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, and shall require, at a minimum, for all vehicles that are not diesel-powered, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas. The department shall ensure all of the following:

[¶]...[¶]

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

⁵ Health and Safety Code section 44015, subdivision (b), states: "If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

⁶ California Code of Regulations, title 16, section 3340.24, subdivision (c), states: "The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance."

as required by California Code of Regulations, title 16, section 3340.35, subdivision (c).⁷

C. Respondent failed to conduct the required smog tests on the vehicle in accordance with the bureau's specifications, as required by California Code of Regulations, title 16, section 3340.42.⁸

Undercover Operation #2

20. Michael Frerichs is employed by the BAR as a Program Representative in the BAR's Sacramento Documentation Lab. As part of his job duties, Mr. Frerichs prepares undercover vehicles for smog inspections and inspects those cars after they are returned.

21. On July 14 through July 18, 2008, Mr. Frerichs prepared a 1998 Ford Explorer, California license number 5CEU688, (Explorer) for an undercover run. The required emissions control systems for this vehicle included, among other things, a positive crankcase ventilation (PCV) system, which a technician is required to visually inspect during the course of a California Emissions Inspection Test. Mr. Frerichs photographed the PCV system properly installed on the vehicle. He also photographed the underhood emission control information label, with the vacuum diagram showing that a PCV system is required on this vehicle.

Mr. Frerichs conducted a California Emissions Inspection Test, which the Explorer passed. Mr. Frerichs then removed the PCV vacuum hose and PCV valve. He installed a marked crankcase breather filter in place of the PCV valve and installed a marked vacuum cap on the intake manifold PCV vacuum hose fitting. After making these changes, Mr. Frerichs performed another California Emissions Inspection Test, and the Explorer failed the visual portion of the test due to the missing PCV components. Mr. Frerichs photographed the removed PCV hose and PCV valve. He also photographed the area on the engine where the PCV vacuum hose was removed, and where the crankcase breather filter and vacuum cap were installed on the engine.

22. On July 25, 2008, Kenn Besson received the Explorer from the BAR's Documentation Lab. Mr. Besson visually verified that the PCV system had been removed from the vehicle, and that an open element air breather had been used to replace the PCV valve and a vacuum plug had been used to block the vacuum port. On August 5, 2008, at the BAR's Documentation Lab, Mr. Besson reinspected the Explorer and visually verified that

⁷ California Code of Regulations, title 16, section 3340.35, subdivision (c), states in pertinent part: "A licensed station shall issue a 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...."

⁸ California Code of Regulations, title 16, section 3440.42 states, in pertinent part: "Smog check stations and smog check technicians shall conduct tests and inspections in accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in subsection (b) of Section 3340.17 of this article..."

the PCV system was still missing and that the alterations previously observed were still in place. Mr. Besson released the vehicle to Christopher Pryor, a BAR Program Representative, who drove the vehicle to a prearranged location in Truckee, California. At that prearranged location, Mr. Besson photographed the area of the missing PCV valve in the Explorer. Mr. Pryor, acting as an undercover operator for the BAR, drove the vehicle to respondent's facility and requested a smog inspection, using the alias "Curtis Olinger." Mr. Pryor did not sign a work order or receive a written estimate for the inspection. Respondent's employee, technician Stanton Saengpradap, performed the inspection, signed a Smog Check VIR, and issued electronic Certificate of Compliance No. NC649781C, certifying that the Explorer was in compliance with applicable laws and regulations. Mr. Pryor paid \$68.25 for the smog inspection and certificate. He received copies of an invoice and VIR.

23. The VIR included a section entitled "Emission Control Systems Visual Inspection/Functional Check Results." During the inspection, a test analyzer prompts the technician to inspect a list of items. The technician must respond to the prompt by entering on the screen either pass, fail, missing or modified. One of the items on the Visual Inspection/Functional Check test is "PCV." The VIR completed by respondent's technician and provided to Mr. Pryor stated "PASS," indicating that the PCV system on the vehicle was present and complete pursuant to a visual inspection by the technician.

24. After paying for the smog inspection, Mr. Pryor returned the Explorer to Mr. Besson, who took another photograph of the engine, which showed the area where the PCV system had been altered, and the PCV valve was still missing.

25. On August 5, 2008, respondent authorized statements which, in the exercise of reasonable care, it should have known to be untrue or misleading, by issuing electronic Certificate of Compliance No. NC649781C for the Explorer, certifying that the vehicle had passed the inspection and was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the smog inspection required by Health and Safety Code section 44012 because the PCV vacuum hose and PCV valve were removed from the vehicle and were replaced with a crankcase breather filter, and a vacuum cap had been installed on the intake manifold PCV vacuum hose fitting.

26. On August 5, 2008, respondent committed acts constituting fraud, and committed a dishonest act whereby another is injured, by issuing electronic Certificate of Compliance No. NC649781C for the Explorer 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.

27. Respondent failed to comply with Business and Professions Code section 9884.9, subdivision (a), in the following material respects: respondent failed to obtain the operator's authorization for the smog inspection on the Explorer, in that respondent failed to have the operator sign a work order. Furthermore, respondent failed to provide the operator with a written estimate for parts and/or labor necessary for the smog inspection. (Finding 22.)

28. In connection with the smog test performed on the Explorer on August 5, 2008, respondent failed to comply with the Health and Safety Code in the following respects:

A. Respondent, through its employee, failed to perform emission control tests on the vehicle in accordance with prescribed procedures, as required by Health and Safety Code section 44012, subdivision (f).

B. Respondent issued electronic Certificate of Compliance No. NC649781C for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012, as required by Health and Safety Code section 44015, subdivision (b)

29. In connection with the smog test performed on the Explorer on August 5, 2008, respondent failed to comply with provisions of the California Code of Regulations, title 16, in the following respects:

A. Respondent falsely issued electronic Certificate of Compliance No. NC649781C for the vehicle, in that it could not pass the smog inspection because the vehicle's thermostatic air cleaner hot air tube was missing, in violation of California Code of Regulations, title 16, section 3340.24, subdivision (c).

B. Respondent issued electronic Certificate of Compliance No. NC649781C for the vehicle, even though the vehicle had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42, as required by California Code of Regulations, title 16, section 3340.35, subdivision (c).

C. Respondent failed to conduct the required smog tests on the vehicle in accordance with the bureau's specifications, as required by California Code of Regulations, title 16, section 3340.42.

Matters in Aggravation – Prior Citations Against Respondent

30. On August 8, 2007, the BAR issued Citation No. C08-0107 against respondent's ADR registration and smog check station license for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent had issued a certificate of compliance for a BAR undercover vehicle with a missing PCV system. The BAR assessed civil penalties totaling \$500 against respondent for the violations. Respondent complied with the citation and paid the fine on September 27, 2007.

31. On November 20, 2007, the BAR issued Citation No. C08-0497 against respondent's ADR registration and smog check station license for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). Respondent had issued a certificate of compliance for a BAR undercover vehicle with a missing PCV system. The BAR assessed civil penalties totaling \$2,000 against respondent for the violations. Respondent complied with the citation and paid the fine on April 4, 2008.

Matters in Aggravation – Prior Citations Against Respondent's President

32. On June 14, 2002, the BAR issued Citation No. C02-1112 against respondent's president, John Lamoreux, as sole owner of Auto Doctor, for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor had issued a certificate of compliance for a BAR undercover vehicle with incorrect ignition timing. The BAR assessed civil penalties totaling \$500 against respondent's president for the violations. Respondent's president complied with the citation and paid the fine on July 12, 2002.

33. On June 4, 2004, the BAR issued Citation No. C04-0583 against respondent's president, John Lemieux, as sole owner of Auto Doctor, for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor had issued a certificate of compliance for a BAR undercover vehicle with incorrect ignition timing. The BAR assessed civil penalties totaling \$500 against respondent's president for the violations. Respondent's president complied with the citation and paid the fine on July 1, 2004.

34. On September 8, 2004, the BAR issued Citation No. C05-0089 against respondent's president, John Lamoreux, as sole owner of Auto Doctor, for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor had issued a certificate of compliance for a BAR undercover vehicle with incorrect ignition timing. The BAR assessed civil penalties totaling \$1,000 against respondent's president for the violations. Respondent's president complied with the citation and paid the fine on November 24, 2004.

35. On May 29, 2007, the BAR issued Citation No. C07-0946 against respondent's president, John Lamoreux, as sole owner of Auto Doctor, for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely owned by respondent's president, had issued a certificate of compliance to a BAR undercover vehicle with a missing air injection system. The BAR assessed civil penalties totaling \$500 against respondent's president for the violations. Respondent's president complied with the citation and paid the fine on June 21, 2007.

Citation Conferences

36. As the owner of Auto Doctor, Mr. Lamoreux attended a Citation Office Conference on June 27, 2002, in connection with the June 14, 2002 citation (Finding 32). Kenn Besson and Bill Howe, Program Representative II, were present at the Citation Office Conference. Mr. Lamoreux was provided with current copies of the laws and regulations pertaining to the Automotive Repair Act and the Smog Check Program; a reprint of the *Bennett v. Hayes* court decision; a copy of the *Smog Check Handbook*; and "Write it Right," an instructional pamphlet for invoice writing. The BAR representatives offered to provide instruction for service representatives. Mr. Lamoreux was informed that a documented vehicle and/or station inspection would take place to confirm compliance with applicable laws and regulations.

37. Mr. Lamoreux attended a Citation Office Conference on January 10, 2008, in connection with the November 20, 2007 citation (Finding 31). Mr. Besson and Tim Bowden, Program Representative II, were present at the Citation Office Conference. Mr. Lamoreux was warned that there would be further undercover operations at respondent's facility to verify voluntary compliance with the laws and regulations pertaining to the Smog Check Program. Mr. Lamoreux was informed that the May 29, 2007 citation was a "Level 3" citation, and that a subsequent "fourth level citation" could "go to administrative hearing" and result in disciplinary action against respondent's licenses. BAR representatives offered to provide instruction at respondent's facility for its employees, but Mr. Lamoreux did not request additional training for respondent's employees.

Respondent's Evidence

38. Mr. Lamoreux has engaged in car repair and maintenance since he was a teenager, and owning his own business has been his lifelong dream. He started Auto Doctor at age 23. His business grew, and he added smog inspections to his automotive repair business. Auto Doctor moved to its current location in July of 2005, and Mr. Lamoreux formed respondent as a corporation in 2007. Mr. Lamoreux invested his life savings in constructing his own shop at its current location, where he employs 12 people. Mr. Lamoreux is not a licensed mechanic; however, with his experience in automotive

maintenance, he feels he is able to supervise the operation of the auto repair aspects of his business.

39. Mr. Lamoreux is not a licensed smog technician, and he has relied on the training and expertise of the technicians he employs to "do their jobs." He initially hired smog technicians and paid them "by the job" (i.e., for each inspection). After receiving one citation in 2002 and two citations in 2004 (Findings 32, 33, and 34), the business was not cited for any violations for more than two and a half years. The business received three citations in 2007, one under Auto Doctor's license, and two under respondent's license (Findings 30, 31, and 35).

40. After meeting with BAR representatives at the Citation Office Conference in January of 2008, Mr. Lamoreux decided to hire a smog technician "right out of school," and pay the individual a salary, in order to insure that the individual would perform thorough inspections. Respondent hired Stanton Saengpradap in April of 2008, and he began work three days before the April 17, 2008 undercover operation, in which he improperly issued the certificate of compliance for the Sundance after failing to perform a proper visual inspection of the vehicle.

41. Mr. Lamoreux stated that he is not able to monitor the work of the smog technicians and is not qualified to insure that they are performing their duties correctly. His response to past citations has been to change technicians. Respondent has not offered additional training to its employees, and Mr. Lamoreux has not obtained training as a smog technician himself.

Costs

42. The Accusation herein contains a request for costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3, in the total amount of \$9,123.49. The costs were certified in the manner provided by Business and Professions Code section 125.3, subdivision (c). BAR submitted a cost certification for investigative services from BAR staff, including investigator costs of \$3,490.24; undercover vehicle operator fees of \$200; and "evidence purchase costs" (i.e. the cost of two smog inspections) of \$124. However, as set forth in Finding 22, Mr. Pryor is a BAR employee. He was not paid an undercover operator fee. The undercover operator for Undercover Operation #1 was paid \$100.

BAR's cost certification listed 37 hours of Program Representative I costs, in the amount of \$2,660.51, and 11 hours of Program Representative II costs, in the amount of \$829.73. No written breakdown of the activities of specific individuals was provided to support the cost certification. However, Mr. Mummert, Mr. Besson, Mr. Frerichs, and Mr. Pryor all testified at hearing concerning their activities in support of the two undercover operations that form the basis of the disciplinary action herein. Mr. Mummert and Mr. Frerichs each spent between 15 and 20 hours preparing and documenting the vehicles for the two undercover operations; Mr. Pryor spent five hours as an undercover operator; and Mr. Besson estimated that

he spent approximately 30 hours organizing and carrying out the two undercover operations, including report writing. Apart from Mr. Besson's testimony that he submitted his report of investigation to a Program Representative II for review, there was no evidence to substantiate the cost request for Program Representative II. Therefore, \$2,884.51 in BAR investigative costs were established, as follows: \$100 undercover vehicle operator fee; \$124 evidence purchase costs; and \$2,660.51 for Program Representative I investigator costs.

43. The declaration of Jeffrey M. Phillips, Deputy Attorney General (declaration), was submitted in support of the cost certification for services from the Office of the Attorney General, in the total amount of \$5,309.25. Attached to the declaration was a computer-generated billing printout from the Office of the Attorney General. According to the declaration and accompanying computer printout, a legal analyst spent 2.75 hours for "pleading preparation," at a cost of \$277.75. A total of 30.25 hours of attorney time was charged, for tasks including pleading preparation, trial preparation, case management, and research, for a total of \$5,031.50. The time spent by the Office of the Attorney General was reasonable and the activities necessary to the development and presentation of the case.

44. As set forth in Factual Findings 42 and 43, the reasonable costs of investigation and enforcement of this matter are \$8,193.76.

45. The majority of respondent's business income is derived from its automotive repair activities. Respondent is financially able to pay costs.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 9884.7, subdivisions (a)(1), (4), and (6), state:

(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.

2. Health and Safety Code section 44072, subdivisions (a), (c), and (d) state:

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 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.

Cause for Discipline – ARD Registration

3. Cause for discipline of respondent's ARD Registration was established by clear and convincing evidence pursuant to Business and Professions Code section 9884.7, subdivision (a)(1) (untrue or misleading statements), by reason of Factual Findings 9, 11, 12, 13, 15, 21, 22, 23, and 25,

4. Cause for discipline of respondent's ARD Registration was established by clear and convincing evidence pursuant to Business and Professions Code section 9884.7, subdivision (a)(4) (fraud), by reason of Factual Findings 9, 11, 12, 13, 16, 21, 22, 23, and 26.

5. Cause for discipline of respondent's ARD registration was established by clear and convincing evidence pursuant to Business and Professions Code section 9884.7, subdivision (a)(6) (violations of the Business and Professions Code), by reason of Findings 9, 12, 17, 21, 22, 23, and 27.

Cause for Discipline – Smog Check Station License

6. Cause for discipline of respondent's Smog Check Station License was established by clear and convincing evidence pursuant to Health and Safety Code section 44072.2, subdivision (a) (violations of the Motor Vehicle Inspection Program), by reason of Factual Findings 9, 11, 12, 13, 18, 21, 22, 23, and 28.

7. Cause for discipline of respondent's Smog Check Station License was established by clear and convincing evidence pursuant to Health and Safety Code section 44072.2, subdivision (c) (failure to comply with regulations pursuant to the Motor Vehicle Inspection Program), by reason of Factual Findings 9, 11, 12, 13, 19, 21, 22, 23, and 29.

8. Cause for discipline of respondent's Smog Check Station License was established by clear and convincing evidence pursuant to Health and Safety Code section 44072.2, subdivision (d) (dishonesty, fraud or deceit), by reason of Factual Findings 9, 11, 12, 13, 16, 21, 22, 23, and 26.

Penalty

9. California Code of Regulations, title 16, section 3395.4, states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary guidelines entitled "Guidelines for Disciplinary Penalties and Terms of Probation" [May, 1997] which are hereby incorporated by reference. The "Guidelines for Disciplinary Penalties and Terms of Probation" are advisory. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion determines that the facts of the particular case warrant such deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

10. The BAR's Guidelines for Disciplinary Penalties and Terms of Probation (Guidelines) include factors in aggravation and in mitigation to be considered in determining an appropriate penalty. The Guidelines state, in pertinent part:

II. FACTORS IN AGGRAVATION AND IN MITIGATION

The Bureau normally submits cases for the filing of an Accusation based on investigations and the use of undercover vehicle operations in order to detect and document multiple

violations of the Smog Check Program or the Automotive Repair Act.

In determining the proper penalty within the suggested ranges the following factors should be considered:

1. Factors in Aggravation

- a. Prior warnings from BAR
- b. Prior Notices of Violations
- c. Prior Office Conference with BAR
- d. Prior adverse Inspection Reports
- e. Prior demonstrations of incompetence
- f. Prior history of citations
- g. Prior history of formal disciplinary action
- h. Failure to permit BAR inspection of records
- i. Abuse of mechanic's lien
- j. Attempts to intimidate consumer
- k. Negligent or willful improper repair work that endangers consumer
- l. Evidence that the unlawful act was part of a pattern of practice
- m. Failure to comply with BAR request for corrective action/retraining
- n. Currently on probation for improper acts
- o. Failure to successfully complete prior period of probation
- p. Failure to pay court judgment to victim
- q. Violation of previous court order
- r. Any other conduct which constitutes fraud or gross negligence

2. Factors in Mitigation

- a. Evidence that respondent accepted BAR's suggested resolution to consumer complaint
- b. Evidence of voluntary participation in retraining for self or employees
- c. Evidence of voluntary purchase of proper diagnostic equipment and manuals
- d. Evidence of temporary medical condition that prevented respondent from exercising supervision and control over employees or others, which led to wrongdoing
- e. No loss to consumer and no damage to consumer's property (Undercover cars are treated as if they were consumers' cars)
- f. Evidence that shop has taken specific steps for retraining and has initiated steps to minimize recurrence

- g. Evidence of resolution of all consumer complaints with a subsequent change in business practice
- h. Evidence of internal control or audit designed to eliminate errors

The absence of any new allegations or amendments to the accusation as originally filed, during the period between the filing of the accusation and the date the matter comes to hearing, in itself, shall not be regarded as evidence of mitigation.

11. As set forth in the Factual Findings, respondent and its president, John Lamoreux, operating as Auto Doctor, were issued multiple citations by the BAR between 2002 and 2007, for failure to properly perform visual inspections on undercover vehicles. Mr. Lamoreux has met with BAR personnel on at least two occasions to discuss improper inspections resulting in citations. The BAR provided respondent with copies of laws and regulations, as well as other written materials to assist licensees/registrants to comply with the Smog Check Program. Respondent was put on notice that the BAR would be conducting further inspections to ensure compliance. However, respondent, through its employees/technicians, continued to violate applicable statutes and regulations by conducting improper visual inspections of vehicles. Respondent's facility performed five improper inspections of BAR undercover vehicles between May 29, 2007, and August 5, 2008, a period of less than 15 months. Respondent's efforts to rectify the situation have been inadequate. Respondent has demonstrated, through a pattern of conduct, that respondent is incapable of changing its business practices or instituting sufficient internal controls to eliminate errors and improper inspections. Under all of the facts and circumstances, it would be contrary to the public interest to permit respondent to retain its smog check station license.

12. The evidence did not establish that respondent has engaged in any improper conduct as an automotive repair dealer. Respondent shall be permitted to retain its ARD registration, subject to probationary terms and conditions.

Costs

13. Business and Professions Code section 125.3 provides, in pertinent part, that the bureau 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. Business and Professions Code section 125.3, subdivision (c), states:

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the

hearing, including, but not limited to, charges imposed by the Attorney General.

14. As set forth in Findings 42, 43, and 44, the reasonable costs of investigation and enforcement claimed by the BAR herein are in the amount of \$8,193.76. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, identifies the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. In this case, all of the allegations were sustained. As set forth in Finding 45, respondent is capable of making cost payments.

ORDER

1. Smog Check Station License No. RC 251206, issued to The Auto & Tire Doctor, Inc., is revoked by reason of Legal Conclusions 6, 7, 8, and 11.

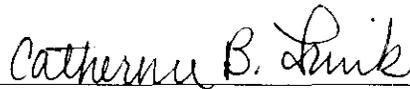
2. Automotive Repair Dealer Registration No. ARD 251206, issued to The Auto & Tire Doctor, Inc., is invalidated by reason of Legal Conclusions 3, 4, 5, 11, and 12. However, the revocation is stayed, and respondent is placed on probation for three (3) years, subject to the following terms and conditions:

- A. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
- B. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- C. Within 30 days of the effective date of this action, respondent shall report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- D. Respondent shall provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

- E. Respondent shall pay costs, in the amount of \$8,193.76, according to a payment schedule promulgated by the bureau, to be completed no later than 30 days prior to the expiration of probation.
- 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, temporarily or permanently invalidate the registration.

3. Respondent is ordered to pay to the bureau the costs of investigation and prosecution of this matter, in the amount of \$8,193.76 pursuant to Legal Conclusion 14. Costs shall be paid as set forth in Condition E. of the Conditions of Probation for respondent's ARD registration.

Dated: 12/2/09



CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

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9
10
11

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

12 In the Matter of the Accusation Against:
13 THE AUTO & TIRE DOCTOR, INC.
JOHN LAMOREUX, PRESIDENT
14 12000 Pioneer Trail
Truckee, CA 96162
15 Automotive Repair Dealer Reg. No. ARD 251206
16 Smog Check Station License No. RC 251206
17 Respondent.

Case No. 79/09-52

**A C C U S A T I O N
(Smog Check)**

18 Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration No. ARD 251206

24 2. On or about July 24, 2007, the Director of Consumer Affairs ("Director")
25 issued Automotive Repair Dealer Registration Number ARD 251206 to The Auto & Tire Doctor,
26 Inc. ("Respondent"), with John Lamoreux as president. Respondent's automotive repair dealer
27 registration was in full force and effect at all times relevant to the charges brought herein and
28 will expire on June 30, 2009, unless renewed.

1 **Smog Check Station License No. RC 251206**

2 3. On or about July 25, 2007, the Director issued Smog Check Station
3 License Number RC 251206 to Respondent. Respondent's smog check station license was in
4 full force and effect at all times relevant to the charges brought herein and will expire on June
5 30, 2009, unless renewed.

6 **Prior Licensing History**

7 **Automotive Repair Dealer Registration No. ARD 113440**

8 4. On or about October 18, 1984, the Director of Consumer Affairs
9 ("Director") issued Automotive Repair Dealer Registration Number ARD 113440 to
10 Respondent's President, John Lamoreux, as sole owner of Auto Doctor, last located at 12000
11 Pioneer Trail, Truckee, CA 96162. The registration was canceled on or about July 25, 2007.

12 **Smog Check Station License No. RC 113440**

13 5. On or about April 17, 1990, the Director issued Smog Check Station
14 License Number RC 113440 to Respondent's President, John Lamoreau, as sole owner of Auto
15 Doctor, last located at 12000 Pioneer Trail, Truckee, CA 96162. The registration was canceled
16 on or about July 25, 2007.

17 **JURISDICTION**

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

20 7. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
21 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
22 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
23 registration temporarily or permanently.

24 8. Health and Safety Code ("Health & Saf. Code") section 44002 provides,
25 in pertinent part, that the Director has all the powers and authority granted under the Automotive
26 Repair Act for enforcing the Motor Vehicle Inspection Program.

27 9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the Director

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

3 STATUTORY PROVISIONS

4 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

5 (a) The director, where the automotive repair dealer cannot show there
6 was a bona fide error, may refuse to validate, or may invalidate temporarily or
7 permanently, the registration of an automotive repair dealer for any of the
8 following acts or omissions related to the conduct of the business of the
9 automotive repair dealer, which are done by the automotive repair dealer or any
10 automotive technician, employee, partner, officer, or member of the automotive
11 repair dealer.

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

16

17 (4) Any other conduct which constitutes fraud.

18

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

21

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

28 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

1 transmission. If that consent is oral, the dealer shall make a notation on the work
2 order of the date, time, name of person authorizing the additional repairs and
3 telephone number called, if any, together with a specification of the additional
4 parts and labor and the total additional cost . . .

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

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

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

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

16

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

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

21 14. Health & Saf. Code section 44072.8 states that when a license has been
22 revoked or suspended following a hearing under this article, any additional license issued under
23 this chapter in the name of the licensee may be likewise revoked or suspended by the director.

24 Cost Recovery

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

29 UNDERCOVER OPERATION OF APRIL 17, 2008: 1990 PLYMOUTH SUNDANCE

30 16. On April 17, 2008, an undercover operator with the Bureau, using the
31 alias "Ronnie Brooks" (hereinafter "operator"), took the Bureau's 1990 Plymouth Sundance to
32 Respondent's facility and requested a smog inspection. The thermostatic air cleaner hot air tube

1 had been removed from the Bureau-documented vehicle. The operator did not sign a work order
2 or receive a written estimate for the inspection. After the inspection was completed, the operator
3 paid the facility \$68.25 and received copies of an invoice and vehicle inspection report. That
4 same day, electronic smog Certificate of Compliance # MY660211C was issued for the vehicle.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 17. Respondent's automotive repair dealer registration is subject to
8 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
9 Respondent made or authorized a statement which it knew or in the exercise of reasonable care
10 should have known to be untrue or misleading, as follows: Respondent certified that the
11 Bureau's 1990 Plymouth Sundance had passed the inspection and was in compliance with
12 applicable laws and regulations. In fact, the thermostatic air cleaner hot air tube was missing and
13 as such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 18. Respondent's automotive repair dealer registration is subject to
17 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
18 Respondent committed an act which constitutes fraud, as follows: Respondent issued an
19 electronic smog certificate of compliance for the Bureau's 1990 Plymouth Sundance without
20 performing a bona fide inspection of the emission control devices and systems on the vehicle,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Violations of the Bus. & Prof. Code)**

25 19. Respondent's automotive repair dealer registration is subject to
26 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that
27 Respondent failed to comply with section 9884.9, subdivision (a), of that Code in the following
28 material respects: Respondent failed to obtain the operator's authorization for the smog

1 inspection on the Bureau's 1990 Plymouth Sundance in that Respondent failed to have the
2 operator sign a work order.^{1/} Further, Respondent failed to provide the operator with a written
3 estimate for parts and/or labor necessary for the smog inspection.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 20. Respondent's smog check station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
8 comply with the following sections of that Code:

- 9 a. **Section 44012:** Respondent failed to perform the emission control tests
10 on the Bureau's 1990 Plymouth Sundance in accordance with procedures
11 prescribed by the department.
12 b. **Section 44015:** Respondent issued an electronic smog certificate of
13 compliance for the Bureau's 1990 Plymouth Sundance without properly
14 testing and inspecting the vehicle to determine if it was in compliance
15 with Health & Saf. Code section 44012.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

19 21. Respondent's smog check station license is subject to disciplinary action
20 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
21 comply with the following sections of California Code of Regulations, title 16:

- 22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
23 issued an electronic smog certificate of compliance for the Bureau's 1990
24 Plymouth Sundance.

25 //

26 _____
27 1. California Code of Regulations, title 16, section 3303, subdivision (j), states: "Authorization" means
28 consent. Authorization shall consist of the customer's signature on the work order, taken before repair work
begins. Authorization shall be valid without the customer's signature only when oral or electronic authorization is
documented in accordance with applicable sections of these regulations.

1 estimate for parts and/or labor necessary for the smog inspection.

2 **TENTH CAUSE FOR DISCIPLINE**

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

4 27. Respondent's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
6 comply with the following sections of that Code:

- 7 a. **Section 44012:** Respondent failed to perform the emission control tests
8 on the Bureau's 1998 Ford Explorer in accordance with procedures
9 prescribed by the department.
- 10 b. **Section 44015:** Respondent issued an electronic smog certificate of
11 compliance for the Bureau's 1998 Ford Explorer without properly
12 testing and inspecting the vehicle to determine if it was in compliance
13 with Health & Saf. Code section 44012.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

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

17 28. Respondent's smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
19 comply with the following sections of California Code of Regulations, title 16:

- 20 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
21 issued an electronic smog certificate of compliance for the Bureau's 1998
22 Ford Explorer.
- 23 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog
24 certificate of compliance for the Bureau's 1998 Ford Explorer even
25 though the vehicle had not been inspected in accordance with section
26 3340.42.

27 ///

28

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on
2 the Bureau's 1998 Ford Explorer in accordance with the Bureau's
3 specifications.

4 **TWELFTH CAUSE FOR DISCIPLINE**

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

6 29. Respondent's smog check station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
8 dishonest, fraudulent, or deceitful act whereby another is injured. Respondent issued an
9 electronic smog certificate of compliance for the Bureau's 1998 Ford Explorer without
10 performing a bona fide inspection of the emission control devices and systems on the vehicle,
11 thereby depriving the People of the State of California of the protection afforded by the Motor
12 Vehicle Inspection Program.

13 **DISCIPLINE CONSIDERATIONS**

14 30. To determine the degree of discipline, if any, to be imposed on
15 Respondent, Complainant alleges as follows:

16 a. On or about August 8, 2007, the Bureau issued Citation No. C08-0107
17 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure
18 to
19 perform a visual/functional check of emission control devices according to procedures
20 prescribed by the department), and California Code of Regulations, title 16, section
21 ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was
22 improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover
23 vehicle with a missing PCV system. The Bureau assessed civil penalties totaling \$500 against
24 Respondent for the violations. Respondent complied with the citation and paid the fine on
25 September 27, 2007.

26 b. On or about November 20, 2007, the Bureau issued Citation No.
27 C08-0497 against Respondent for violations of Health & Saf. Code section 44012, subdivision
28 (f) (failure to perform a visual/functional check of emission control devices according to

1 procedures prescribed by the department), and Regulation 3340.35, subdivision (c) (issuing a
2 certificate of compliance to a vehicle that was improperly tested). Respondent had issued a
3 certificate of compliance to a Bureau undercover vehicle with a missing PCV system. The
4 Bureau assessed civil penalties totaling \$2,000 against Respondent for the violations.
5 Respondent complied with the citation and paid the fine on April 4, 2008.

6 **PRIOR DISCIPLINE CONSIDERATIONS**

7 31. To determine the degree of discipline, if any, to be imposed on
8 Respondent, Complainant alleges as follows:

9 a. On or about June 14, 2002, the Bureau issued Citation No. C02-1112
10 against Respondent's President, John Lamoreux, as sole owner of "Auto Doctor" for violations
11 of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional
12 check of emission control devices according to procedures prescribed by the department), and
13 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
14 a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely
15 owned by Respondent's President, had issued a certificate of compliance to a Bureau undercover
16 vehicle with incorrect ignition timing. The Bureau assessed civil penalties totaling \$500 against
17 Respondent's President for the violations. Respondent's President complied with the citation
18 and paid the fine on July 12, 2002.

19 b. On or about June 4, 2004, the Bureau issued Citation No. C04-0583
20 against Respondent's President, John Lamoreux, as sole owner of "Auto Doctor" for violations
21 of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional
22 check of emission control devices according to procedures prescribed by the department), and
23 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
24 a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely
25 owned by Respondent's President, had issued a certificate of compliance to a Bureau undercover
26 vehicle with incorrect ignition timing. The Bureau assessed civil penalties totaling \$500 against
27 Respondent's President for the violations. Respondent's President complied with the citation
28 and paid the fine on July 1, 2004.

1 c. On or about September 8, 2004, the Bureau issued Citation No. C05-0089
2 against Respondent's President, John Lamoreux, as sole owner of "Auto Doctor" for violations
3 of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional
4 check of emission control devices according to procedures prescribed by the department), and
5 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
6 a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely
7 owned by Respondent's President, had issued a certificate of compliance to a Bureau undercover
8 vehicle with incorrect ignition timing. The Bureau assessed civil penalties totaling \$1,000
9 against Respondent's President for the violations. Respondent's President complied with the
10 citation and paid the fine on November 24, 2004.

11 d. On or about May 29, 2007, the Bureau issued Citation No. C07-0946
12 against Respondent's President, John Lamoreux, as sole owner of "Auto Doctor" for violations
13 of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional
14 check of emission control devices according to procedures prescribed by the department), and
15 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
16 a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely
17 owned by Respondent's President, had issued a certificate of compliance to a Bureau undercover
18 vehicle with a missing air injection system. The Bureau assessed civil penalties totaling \$500
19 against Respondent's President for the violations. Respondent's President complied with the
20 citation and paid the fine on June 21, 2007.

21 **OTHER MATTERS**

22 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
23 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations
24 for all places of business operated in this state by Respondent The Auto & Tire Doctor, Inc. upon
25 a finding that said Respondent has, or is, engaged in a course of repeated and willful violations
26 of the laws and regulations pertaining to an automotive repair dealer.

27 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station
28 License Number RC 25 1206, issued to The Auto & Tire Doctor, Inc., is revoked or suspended,

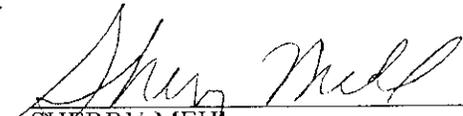
1 any additional license issued under this chapter in the name of said licensee may be likewise
2 revoked or suspended by the director.

3 PRAYER

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

- 6 1. Temporarily or permanently invalidating Automotive Repair Dealer
7 Registration Number ARD 251206, issued to The Auto & Tire Doctor, Inc.;
- 8 2. Temporarily or permanently invalidating any other automotive repair
9 dealer registration issued to The Auto & Tire Doctor, Inc.;
- 10 3. Revoking or suspending Smog Check Station License Number
11 RC 251206, issued to The Auto & Tire Doctor, Inc.;
- 12 4. Revoking or suspending any additional license issued under Chapter 5 of
13 the Health and Safety Code in the name of The Auto & Tire Doctor, Inc.;
- 14 5. Ordering Respondent The Auto & Tire Doctor, Inc. to pay the Director of
15 Consumer Affairs the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Business and Professions Code section 125.3;
- 17 6. Taking such other and further action as deemed necessary and proper.

18 DATED: 12/11/08

19 
20 SHERRY MEHL
21 Chief
22 Bureau of Automotive Repair
23 Department of Consumer Affairs
24 State of California

25 Complainant
26
27
28