

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

In the Matter of the Accusation Against:

**FERGUSON'S AUTO CENTER**  
7561 Garden Grove Boulevard  
Garden Gove, CA 92841-4205  
CRAIG FERUSON, Owner

Automotive Repair Dealer  
Registration No. ARD-096133,  
Smog Check Test & Repair Station  
License No. RC-096133,

Respondent.

Case No. 79/09-72

OAH No. 2009050828

**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, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 12, paragraph 2.a. of the Order of the Proposed Decision is deleted. That paragraph states that respondent is required to post a prominent sign indicating the beginning and ending dates of the suspension. The decision makes no mention of suspension of the license.

This Decision shall become effective 4/26/10.

IT IS SO ORDERED this 22nd day of March, 2010.

  
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DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation  
Against:

FERGUSON'S AUTO CENTER  
7561 Garden Grove Boulevard  
Garden Grove, California 92841-4205  
CRAIG FERGUSON, Owner,

Automotive Repair Dealer  
Registration No. ARD-096133,  
Smog Check Test & Repair Station  
License No. RC-096133,

Respondent.

Case No. 79/09-72

OAH No. 2009050828

**PROPOSED DECISION**

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Laguna Hills on January 27, 2010. Complainant was represented by Thomas L. Rinaldi, Deputy Attorney General. Respondent Craig Ferguson, doing business as Ferguson's Auto Center, was present and represented himself.

At the commencement of the hearing, complainant's request to amend the Accusation was granted as follows: on page 5, paragraph 16, the Third Cause for Discipline was deleted or stricken from the pleading.

Documentary, stipulated, and oral evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. The Administrative Law Judge takes official notice that, on February 2, 2009, the Accusation, Case No. 79/09-72, was made and filed by complainant Sherry Mehl in her official capacity as Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California (hereinafter Bureau).

2. (A) On or about July 6, 1982, the Bureau issued automotive repair dealer registration no. ARD-96133 to respondent Craig Ferguson, doing business as Ferguson's Auto Center, 7561 Garden Grove Boulevard, Garden Grove, California 92841-4025 (hereinafter respondent). Said automotive repair dealer registration expires on July 31, 2010, unless renewed, and currently is in full force and effect.

(B) On or about April 2, 1984, the Bureau issued smog check station license no. RC-096133 to respondent. Said license expires on July 31, 2010, unless renewed, and currently is in full force and effect.

3. At all times relevant herein, respondent employed Christopher Quinn, a licensed smog check technician, to perform smog check inspections at Ferguson's Auto Center (station) and to issue certificates of compliance to vehicles that were in compliance with applicable laws and regulations. At all times relevant herein, Quinn was an agent and employee of respondent who, in turn, was responsible for supervising Quinn's licensed activities at the station.

4. In June 2008, the Bureau conducted two undercover investigations at respondent smog check station in Garden Grove. From its investigations, the Bureau determined that respondent had committed various violations of the laws and regulations governing smog check inspections and certifications. Subsequently, the Bureau made and filed the Accusation at issue in this matter and issued a citation to respondent's smog check technician Quinn. Quinn has appealed his citation which remains pending in a separate administrative proceeding.

#### First Undercover Operation

5. (A) On June 6, 2008, a Bureau undercover operative drove a tampered 1993 Chevrolet Astro van, California license plate no. 3DCE206 (Chevrolet), to respondent's smog check station and requested a smog inspection. The Chevrolet had been tampered and documented such that the ignition timing was purposely misadjusted or advanced beyond the manufacturer's specification. As tampered, the vehicle should not have passed the functional test portion of a smog check inspection that all emission control devices and systems were properly installed and functioning properly. Respondent prepared a work order indicating an estimate for the smog check inspection of \$50 and gave a copy of the work order to the undercover operative.

(B) On June 6, 2008, Quinn as the station's licensed technician performed a smog check inspection on the Chevrolet and issued electronic Certificate of Compliance, no. VP795418C, for the vehicle, certifying that he had properly inspected the vehicle and determined that the vehicle had all required emission control equipment and devices installed and functioning correctly in accordance with the law and Bureau requirements.

(C) On June 6, 2008, Quinn gave the undercover operative a Smog Check Vehicle Inspection Report, which stated that the Chevrolet had passed the smog check inspection and set forth the certificate number, and invoice. The Vehicle Inspection Report also stated that the smog check inspection station was Ferguson's Auto Center. The undercover operative paid \$65 for the smog check inspection and the certificate and returned the Chevrolet to the Bureau. Subsequently, a program representative at the Bureau's documentation laboratory re-inspected the vehicle and confirmed that its distributor had not been disturbed and the ignition timing had not been modified or corrected at respondent's station.

6. (A) On June 6, 2008, respondent by his agent and employee, technician Quinn, failed to perform a functional check of all emission control devices of the Chevrolet, specifically, the ignition timing, in accordance with proper test procedures in violation of Health and Safety Code (HSC) section 44012, subdivision (f).

(B) On June 6, 2008, respondent failed to perform tests of the emission control devices and systems of the Chevrolet in accordance with HSC section 44012, which constituted a violation of HSC section 44032.

(C) On June 6, 2008, respondent issued an electronic certificate of compliance for the Chevrolet without properly testing and/or inspecting all of the vehicle's emission control systems to determine whether the vehicle met the requirements of HSC section 44012, which constituted a violation of HSC section 44015, subdivision (b).

(D) On June 6, 2008, respondent willfully made a false statement or entry in regard to a material matter for the certificate of compliance for the Chevrolet in violation of HSC section 44059. Respondent's technician entered false information into the Emission Inspection System (EIS) unit by entering "Pass" for the ignition portion of the smog test when, in fact, the Chevrolet could not have passed the functional portion of the smog inspection because its ignition timing was misadjusted beyond specification.

7. (A) On June 6, 2008, respondent, by his employee and agent, technician Quinn, falsely or fraudulently issued an electronic certificate of compliance for the Chevrolet in violation of California Code of Regulations, title 16 (Regulations), section 3340.24, subdivision (c), because his technician did not perform a bonafide inspection of the vehicle's emission control devices and systems.

(B) On June 6, 2008, respondent issued an electronic certificate of compliance for the Chevrolet even though his technician failed to inspect the vehicle to confirm that it had all the required emission control equipment and devices installed and functioning correctly, which constituted a violation of Regulations section 3340.35, subdivision (c).

8. It was not established that respondent violated Regulations section 3340.42, for the evidence did not demonstrate that respondent or his technician failed to conduct smog check test procedures in accordance with the Bureau's test analyzer system specifications or

emissions inspections system specifications. No evidence was presented of any specifications.

9. On June 6, 2008, respondent committed an act or acts involving dishonesty, fraud, or deceit whereby another person was injured in violation of HSC section 44072.2, subdivision (d). Specifically, respondent's technician failed to perform a bonafide smog check inspection of the emission control devices and systems of the Chevrolet and then issued a false and fraudulent certificate of compliance for the vehicle. In doing so, respondent's employee and agent falsely certified that he had inspected and tested the Chevrolet and that the vehicle had all required emission control equipment and devices installed and functioning correctly.

10. (A) Based on Findings 2 – 9 above, respondent, in his capacity as an automobile repair dealer and by his technician, made a statement, which his technician knew or should have known with the exercise of reasonable care, was untrue or misleading in violation of Business and Professions Code section 9884.7, subdivision (a)(1), by issuing the electronic certificate of compliance and certifying that the Chevrolet was in compliance with applicable smog check inspection laws and regulations. In fact, the Chevrolet could not have passed the functional portion of a bonafide smog check inspection due to the misadjustment of its ignition timing.

(B) It was not established that respondent made an untrue or misleading statement when he wrote on the work order or estimate that the Chevrolet's mileage or odometer reading was 101,591 and his technician indicated on the Vehicle Inspection Report that the vehicle's mileage or odometer reading was 101,561. Respondent's notation of the mileage was not shown to be other than an honest mistake. No probative evidence was presented of the actual mileage of the vehicle.

11. Based on Findings 2 – 10(A) above, respondent in his capacity as an automobile repair dealer and by his technician committed acts constituting fraud in violation of Business and Professions Code section 9884.7, subdivision (a)(4), by issuing the electronic certificate of compliance and certifying that the Chevrolet was in compliance with applicable smog check after he failed to perform a bonafide smog check inspection of the vehicle. As such, respondent deprived the public of the protections afforded by the Motor Vehicle Inspection Program.

#### Second Undercover Operation

12. (A) On June 26, 2008, a Bureau undercover operative drove a tampered 1996 Chevrolet All-Wheel Drive Astro van, California license plate no. 4LPR244 (Astro), to respondent's smog check station and requested a smog inspection. The Astro had been tampered and documented such that the vehicle's positive crank case ventilation (PCV) system had been removed and a plug inserted in place of the hoses, tubes, and vents of the PCV system. As tampered, the Astro should not have passed the visual test portion of a

smog check inspection that all emission control devices and systems were properly installed and functioning properly. Respondent was present at the station but another employee prepared a work order or estimate for the smog check inspection, which was \$50. The undercover operative was provided with a copy of the work order or estimate.

(B) On June 26, 2008, Quinn as the licensed technician at respondent's station performed a smog check inspection on the Astro and then issued an electronic Certificate of Compliance, no. VP795430C, for the vehicle, certifying that he had properly inspected the vehicle and determined that the vehicle had all required emission control equipment and devices installed and functioning correctly in accordance with the law and Bureau requirements.

(C) On June 26, 2008, Quinn completed and gave the undercover operative an invoice and a Smog Check Vehicle Inspection Report, which stated that the Astro had a PCV system and had passed the smog check inspection. The Vehicle Inspection Report set forth the certificate number and stated that the smog check inspection station was Ferguson's Auto Center. The undercover operative paid \$50 for the smog check inspection and the certificate and then returned the Astro to the Bureau.

13. (A) On June 26, 2008, respondent by his agent and employee, technician Quinn, failed to perform a proper visual inspection and check of all emission control devices of the Astro, specifically, the PCV system, in accordance with proper test procedures in violation of Health and Safety Code (HSC) section 44012, subdivision (f).

(B) On June 26, 2008, respondent failed to perform tests of the emission control devices and systems of the Chevrolet in accordance with HSC section 44012, which constituted a violation of HSC section 44032.

(C) On June 26, 2008, respondent issued an electronic certificate of compliance for the Astro without properly inspecting all of the vehicle's emission control systems to determine whether the vehicle met the requirements of HSC section 44012, which constituted a violation of HSC section 44015, subdivision (b).

(D) On June 26, 2008, respondent willfully made a false statement or entry in regard to a material matter for the certificate of compliance for the Astro in violation of HSC section 44059. Respondent's technician entered false information into the Emission Inspection System (EIS) unit by entering "Pass" for the PCV system when, in fact, the Astro could not have passed the visual portion of the smog inspection because its PCV system was missing.

14. (A) On June 26, 2008, respondent by its employee and agent, technician Quinn, falsely or fraudulently issued an electronic certificate of compliance for the Astro in violation of California Code of Regulations, title 16 (Regulations), section 3340.24, subdivision (c), because his technician did not perform a bonafide visual inspection of the vehicle's emission control devices and systems.

(B) On June 26, 2008, respondent issued an electronic certificate of compliance for the Astro even though his technician failed to inspect the vehicle to confirm that it had all the required emission control equipment and devices installed and functioning correctly, which constituted a violation of Regulations section 3340.35, subdivision (c).

15. It was not established that, on June 26, 2008, respondent violated Regulations section 3340.42, for the evidence did not demonstrate that respondent or his technician failed to conduct smog check test procedures in accordance with the Bureau's test analyzer system specifications or emissions inspections system specifications. No evidence was presented of respondent or his technician having performed improper smog check tests of the Astro.

16. On June 26, 2008, respondent committed an act or acts involving dishonesty, fraud, or deceit whereby another person was injured in violation of HSC section 44072.2, subdivision (d). Specifically, respondent's technician failed to perform a bonafide smog check inspection of the emission control devices and systems of the Astro and then issued a false and fraudulent certificate of compliance for the vehicle. In doing so, respondent's employee and agent falsely certified that he had inspected and tested the Astro and that the vehicle had all required emission control equipment and devices installed and functioning correctly when, in fact, the vehicle's PCV system was missing.

17. Based on Findings 2 – 4 and 12 – 16 above, respondent in his capacity as an automobile repair dealer, and by the acts of his technician, made a statement, which his technician knew or should have known with the exercise of reasonable care, was untrue or misleading in violation of Business and Professions Code section 9884.7, subdivision (a)(1), by issuing the electronic certificate of compliance and certifying that the Astro was in compliance with applicable smog check inspection laws and regulations. In fact, the Astro could not have passed the visual portion of a bonafide smog check inspection due to the missing PCV system.

18. Based on Findings 2 – 4 and 12 – 16 above, respondent in his capacity as an automobile repair dealer, and by the acts of his technician, committed an act or acts constituting fraud in violation of Business and Professions Code section 9884.7, subdivision (a)(4), by issuing the electronic certificate of compliance and certifying that the Astro was in compliance with applicable smog check after he failed to perform a bonafide smog check inspection of the vehicle. As such, respondent deprived the public of the protections afforded by the Motor Vehicle Inspection Program.

Respondent Craig Ferguson

19. (A) Respondent was on probation when the Bureau conducted the two undercover investigations in June 2008. Effective on January 4, 2006, in a Decision after a hearing in Case No. 79/04-62, OAH No. L-2004060114, the Director of Consumer Affairs disciplined respondent's automotive repair dealer registration and smog check station license for violations of Business and Professions Code, section 9884.7, subdivisions (a)(1) and

(a)(4), and Health and Safety Code, section 44072.2, subdivisions (a) and (c). The Director of Consumer Affairs revoked respondent's registration and license, stayed the revocations, and placed respondent on probation for three years on condition, in part, that he obey all laws and regulations governing automotive inspections, estimates, and repairs; report to the Bureau to discuss compliance with probation; and pay costs of \$10,000.

(B) The facts and circumstances of respondent's past disciplinary history were that, in 2002, his smog check station and licensed smog check technician failed to properly inspect and/or repair three undercover vehicles of the Bureau and issued certificates of compliances for the vehicles that should not have passed the smog check inspections. For two of the vehicles, respondent's smog check station and his licensed smog check technician performed unnecessary repairs. The Bureau also revoked the advanced emission specialist technician license previously issued to respondent's employee.

(C) In August 2004, pursuant to a stipulation between the Orange County District Attorney and respondent, and following the Bureau's undercover investigation in 2002, an injunction and final judgment was entered in the Orange County Superior Court wherein respondent was enjoined from violating the laws in repairing automobiles and performing smog check inspections. Respondent was also ordered to pay \$12,000 in costs and penalties.

(D) In January 2009, respondent successfully completed the three-year term of probation. He paid the costs ordered by the Bureau. In addition, he paid the costs and penalties ordered by the Orange County Superior Court.

20. (A) In this second disciplinary matter for his station, respondent asserts that he personally did not commit any dishonest or fraudulent acts or make any false or misleading statements in connection with the two undercover investigations. He points out that only the technician who performed the smog check inspections had access to the smog check computer and equipment.

(B) With respect to the Chevrolet in the present matter, respondent contends that his technician did check the ignition timing of the vehicle because he saw the technician holding a timing light. Respondent also contends that the technician may have measured the ignition timing by disconnecting and/or accessing the vehicle's data link connector. He further argues that the ignition timing measured and entered by the technician on the Vehicle Inspection Report as one degree after top dead center was therefore correct. Respondent's contentions are not persuasive, for he presented no evidence to corroborate his claims. Respondent did not observe his technician measure the vehicle's ignition timing with the timing light. Here, the Bureau's program representative at the documentation laboratory measured the vehicle's ignition timing before and after the undercover operation. The ignition timing before the investigation was misadjusted to ten degrees before top dead center and remained misadjusted after the investigation at ten degrees before top dead center. As such, the weight of the evidence shows that respondent's technician could not have made the measurement that he entered on the Vehicle Inspection Report.

(C) With respect to the Astro, respondent ostensibly argues that the Bureau's photographs of the Astro's engine compartment do not clearly show the area from where the PCV system was removed and his technician could not have seen whether the PCV system was installed or not. Respondent's argument is not persuasive, for the vehicle's underhood label depicts installation of the PCV system and the PCV system with its attendant hoses and pipes was large enough that a competent technician should have noticed during the visual inspection that it was missing from the vehicle and failed the vehicle for this part of the smog check inspection.

21. (A) Before the undercover operations in June 2008, and as required by his probation, respondent met with Bureau representative on several occasions. During one or more of these probation conferences, respondent was advised that the Bureau would be conducting undercover investigations at his station.

(B) Before June 6, 2008, respondent advised his technician Quinn that the Bureau would be conducting undercover investigations at the station. He also placed a written reminder at the technician's workplace in one of the station's service bays or on his computer that he should treat every vehicle that he inspected and tested as if it was an undercover vehicle of the Bureau.

(C) On June 6 and 26, 2008, respondent suspected that the Chevrolet and Astro were undercover vehicles of the Bureau. He told his technician of his suspicions and advised him to be especially careful and thorough. On both occasions, the technician stated to respondent that he had conducted proper smog check inspections of both vehicles. In September 2008, the technician quit his employment at respondent's station after working there for five months.

22. (A) Since June 2008, respondent has taken measures to try to improve the accuracy and completeness of the smog check inspections performed at his station. He has hired a new licensed smog check technician and had him complete a smog check training course offered by the Bureau. He has hired another mechanic and paid for him to complete "ASE" certified and Bureau Clean Air courses in smog check inspections; said employee is waiting to take the test for licensure as a smog check technician. Respondent has also arranged for his son, who is the station manager, to attend a smog check training course at Golden West College. His office manager of nine years has read and reviewed the Bureau's "Write It Right" manual so that she can write proper service orders.

(B) Respondent has also installed video cameras in the service bays of his station so that he can observe activities of his smog check technicians while they perform inspections. He plans to install a video recording system in the future.

23. Respondent has owned and operated his automotive repair station since 1981. He has taken a basic course in smog check inspections but acknowledges that he does not have the training or competency to identify when one of his technicians performs an

improper smog check inspection. He also admits that he cannot supervise every smog check inspection that occurs in his station.

24. (A) Respondent was not healthy at the time of the Bureau's investigation in June 2002. In or about April 2008, he had surgery upon his neck and/or vertebrae and was taking pain and nausea medication at the time of the investigations. In May 2008, he had surgery for skin cancer. In June 2008, he had begun physical therapy following his neck surgery and was absent from his station.

(B) Moreover, respondent's brother died on June 9, 2008, and respondent had to make funeral or service arrangements for him. Lastly, early in June 2008, another of respondent's sons, who is enlisted in the U.S. Army, had to ship out on assignment to Iraq.

25. Respondent is active in his community. He has contributed to school music programs, participated in boat races that benefit the Make-A-Wish Foundation, and sponsored youth sports teams and a beauty and scholarship pageant.

#### Cost Recovery

26. The costs incurred by the Bureau in the investigation and enforcement of this matter total \$15,863.18 [\$11,537.68 + \$4,325.50], based on the Certification of Prosecution Costs and the Certificate of Costs of Investigation and Prosecution (Exh. 3).

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

#### LEGAL CONCLUSIONS

1. Grounds exist to invalidate, temporarily or permanently, the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), for untrue or misleading written statements made by his technician or employee which were known or which by the exercise of reasonable care should have been known to be untrue or misleading, based on Findings 10(A) and 17 above.

2. Grounds exist to invalidate, temporarily or permanently, the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for other conduct constituting fraud, based on Findings 11 and 18 above.

3. Grounds exist to revoke or suspend the smog check station license of respondent pursuant to Health and Safety Code section 44072.2, subdivision (a), in that respondent violated sections of the Motor Vehicle Inspection Program Law as follows:

a. Health and Safety Code section 44012, for failing to properly test and inspect vehicles in accordance with Bureau procedures to ensure that the vehicles have all emission control systems required by law and complied with emission standards, based on Findings 6(A) – (B) and 13(A) – (B) above;

b. Health and Safety Code section 44015, subdivision (b), for issuing false and fraudulent certificates of compliances when the vehicles did not meet the requirements of the Bureau, based on Findings 6(C) and 13(C) above; and

c. Health and Safety Code section 44059, for willfully making false statements or entries in regard to material matters in certificates of compliance for three vehicles, based on Findings 6(D) and 13(D) above.

4. Grounds exist to revoke or suspend the smog check station license of respondent pursuant to Health and Safety Code sections 44072.2, subdivisions (a) and (c), in that respondent violated regulations adopted under the Motor Vehicle Inspection Program Law as follows:

a. California Code of Regulations, title 16, section 3340.24, subdivision (c), for falsely and fraudulently issuing certificates of compliance for two vehicles, based on Findings 7(A) and 14(A) above; and

b. California Code of Regulations, title 16, section 3340.35, subdivision (c), for issuing certificates of compliance for two vehicles even though his technician had not properly inspected the vehicles in accordance with Regulations section 3340.42 and did not determine that the vehicles had all required emission control equipment and devices installed and functioning correctly, based on Findings 7(B) and 14(B) above.

5. Grounds exist to revoke or suspend the smog check station license of respondent pursuant to Health and Safety Code sections 44072.2, subdivision (d), in that respondent committed acts involving dishonesty, fraud, or deceit, whereby another is injured, based on Findings 9 and 16 above.

6. Grounds exist to direct respondent to pay the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3 in that respondent committed violations of the Automotive Repair Act and Motor Vehicle Inspection Program, based on Conclusions of Law 1 – 5 above. The reasonable costs of investigation and enforcement of this matter under Business and Professions Code section 125.3 are \$15,863.18, as set forth in Finding 26 above. In light of the discipline imposed below and the anticipated loss of attendant income, the costs will be reduced to \$10,000.00.

7. Discussion—The purpose of this proceeding is to protect the public from dishonest, unscrupulous, or incompetent practitioners in the smog check inspection industry, including station owners and technicians. Here, respondent, doing business as Ferguson's Auto Center, and by the actions of its licensed smog check technician, made untrue statements and engaged in fraudulent and dishonest conduct by failing to properly inspect two vehicles and by then issuing false and fraudulent smog certificates for the two vehicles. That respondent suspected the two vehicles were undercover vehicles of the Bureau and told his technician to be more careful constitute aggravating, rather than mitigating, factors inasmuch as he harbored his suspicions because he was on probation at the time of this investigation and had been advised by the Bureau that his station was to be investigated by undercover investigations. Despite the advanced notice and warnings, respondent's technician still failed to properly conduct two smog check inspections. This is the second disciplinary action in which it has been proven that respondent did not properly supervise his technicians. Respondent admits that he does not know enough about smog check inspections to supervise his employee-technicians and, thus, the operation of his smog check station. Because aggravating factors outweigh the respondent's evidence in mitigation, the disciplinary action that must be taken in this matter as a matter of public protection and safety is revocation of respondent's smog check station license.

With respect to respondent's automobile repair dealer registration, the evidence in this matter has a tendency in reason to demonstrate that respondent is not necessarily a threat to the public interest when it comes to the estimating of repairs and the repair of automobiles and his operation of his automobile repair facility. Except for his licensed smog check technician, no employee of his station, including respondent himself, actually engaged in dishonest or fraudulent conduct. The actions of the technician were imputed to respondent as the technician's employer and supervisor. There was no evidence of a plan or intention to deceive the public or the state by conducting improper smog check inspections. The evidence did not show that respondent knew that his technician, who he had recently hired, was performing faulty inspections. Rather, the evidence suggests that respondent's technician was negligent and/or incompetent and respondent was negligent and incompetent in failing to supervise him. At the time of the undercover investigation, respondent was also distracted by his medical problems, his brother's death and funeral, and his son's military assignment to Iraq. Afterwards, he gave more attention to his station and shored up the operation of his station by hiring and training new employees and installing video cameras. Respondent has owned and operated his station for 28 years and participated in charitable affairs in his community. He deserves this second chance to operate his long-held automobile repair station within the law and regulations without having to oversee smog check inspections or supervise smog check technicians.

\* \* \* \* \*

WHEREFORE, the following Order is hereby made:

ORDER

1. Smog check test and repair station license no. RC-096133 and licensing rights previously issued by the Bureau of Automotive Repair, Department of Consumer Affairs, to respondent Craig Ferguson, doing business as Ferguson's Auto Center, 7561 Garden Grove Boulevard, Garden Grove, California 92841-4205, are permanently invalidated or revoked, based on Conclusions of Law 3, 4, and 5 and 7 above, jointly and for all.

2. Automotive repair dealer's registration no. ARD-096133 and registration rights previously issued by the Bureau of Automotive Repair to respondent Craig Ferguson, doing business as Ferguson's Auto Center, 7561 Garden Grove Boulevard, Garden Grove, California 92841-4205, are permanently invalidated or revoked, based on Conclusions of Law 1, 2, and 7 above, jointly and for all; provided, however, said order of revocation will be stayed and respondent shall be placed on probation for three (3) years subject to the following terms and conditions of probation:

a. Respondent shall post a prominent sign, which will be provided by the Bureau, indicating the beginning and ending dates of the suspension and the reasons for the suspension. The sign shall be conspicuously displayed at the station in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

b. Respondent shall comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

c. Respondent or its 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.

d. Within thirty (30) days of the effective date of this Decision, respondent shall report any financial interest which any partners, officers, or owners of the respondent facility or station may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

e. Respondent shall provide Bureau representatives with unrestricted access to inspect all vehicles (including parts) which are undergoing repairs until such time of completion of any repairs.

f. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs will have continuing jurisdiction over this matter until the final

decision on the accusation. The period of probation shall be extended until there is a final decision on the accusation.

g. In the event that the Director of Consumer Affairs determines 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.

h. If an accusation is filed against respondent during probation and the accusation involves allegations of false or misleading advertising, respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use or publication.

i. During the first six months of probation, and at his own expense, respondent Craig Ferguson shall attend and successfully complete a Bureau certified training course in the diagnosis, estimating, and repair of automobiles and automotive engines and systems. The course shall be 16 hours or less in duration and subject to the approval by the Bureau. Respondent shall complete the course and submit proof of completion to the Bureau within the first six months of probation. If he fails to submit the proof of completion, respondent's license will be immediately suspended until such proof is received by the Bureau.

j. During the period of probation, respondent shall pay the costs of investigation and prosecution of \$10,000.00, as set forth in Conclusions of Law 6 above. Respondent may pay said costs on an installment or monthly basis during the period of probation by making a written request with the Bureau of Automotive Repair. Respondent's failure to make payment of said costs shall be a violation of the terms and conditions of probation.

k. After the probationary period of three (3) years, respondent's automobile dealer registration will be fully restored.

Dated: Feb 25, 2010

  
Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GREGORY J. SALUTE, State Bar No. 164015  
Supervising Deputy Attorney General  
3 THOMAS L. RINALDI, State Bar No. 206911  
Deputy Attorney General  
4 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
5 Telephone: (213) 897-0977  
Facsimile: (213) 897-2804

6 Attorneys for Complainant  
7

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

12 In the Matter of the Accusation Against:

Case No. 79/09-72

13 **FERGUSONS AUTO CENTER**  
7561 Garden Grove Boulevard  
14 Garden Grove, California 92841-4205  
**CRAIG FERGUSON, OWNER**

**ACCUSATION-SMOG CHECK**

15 Automotive Repair Dealer Registration  
No. ARD 096133  
16 Smog Check Test & Repair Station License  
No. RC 096133

17 Respondent.

18  
19 Sherry Mehl ("Complainant") alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On or about July 6, 1982, the Bureau issued Automotive Repair Dealer  
25 Registration No. ARD 096133 ("registration") to Craig Ferguson doing business as Fergusons  
26 Auto Center ("Respondent"). The registration expired on July 31, 2008.

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1 original estimated price is provided by electronic mail or facsimile transmission.  
2 If that consent is oral, the dealer shall make a notation on the work order of the  
3 date, time, name of person authorizing the additional repairs and telephone  
4 number called, if any, together with a specification of the additional parts and  
5 labor and the total additional cost, and shall do either of the following:

6 (1) Make a notation on the invoice of the same facts set forth in the  
7 notation on the work order.

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

11 "I acknowledge notice and oral approval of an increase in the original estimated  
12 price.

13 \_\_\_\_\_  
14 (signature or initials)"

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **UNDERCOVER OPERATION - JUNE 6, 2008**

18 13. On or about June 6, 2008, a Bureau undercover operator using the alias  
19 "Larry Ferguson" ("operator") drove a Bureau-documented 1993 Chevrolet Astro to  
20 Respondent's facility and requested a smog inspection. The vehicle could not pass a smog  
21 inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's  
22 specifications. The operator signed and received a copy of a work order dated June 6, 2008,  
23 showing an estimate of \$50. Christopher Quinn, a licensed technician, performed the smog  
24 inspection and issued electronic Certificate of Compliance No. VP795418C, certifying that the  
25 vehicle was in compliance with all applicable laws and regulations. In fact, the vehicle could not  
26 pass the functional portion of the smog inspection because the vehicle's ignition timing was  
27 adjusted beyond the manufacturer's specifications. The operator paid \$65 for the smog  
28 inspection, including certificate.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 17. Respondent has subjected his station license to discipline under Health and  
4 Safety Code section 44072.2, subdivision (a), in that on or about June 6, 2008, with regard to the  
5 1993 Chevrolet Astro, he violated sections of that Code, as follows:

6 a. **Section 44012, subdivision (a):** Respondent failed to determine that all  
7 emission control devices and systems required by law were installed and functioning correctly in  
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to perform emission  
10 control tests on those vehicles in accordance with procedures prescribed by the department.

11 c. **Section 44015, subdivision (b):** Respondent issued electronic  
12 Certificate of Compliance No. VP795418C for that vehicle without properly testing and  
13 inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

14 d. **Section 44059:** Respondent willfully made false entries for electronic  
15 Certificate of Compliance No. VP795418C by certifying that the vehicle had been inspected as  
16 required when, in fact, it had not.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

19 18. Respondent has subjected his station license to discipline under Health and  
20 Safety Code section 44072.2, subdivision (c), in that on or about June 6, 2008, regarding the  
21 1993 Chevrolet Astro, he violated sections of the California Code of Regulations, title 16, as  
22 follows:

23 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently  
24 issued electronic Certificate of Compliance No. VP795418C for that vehicle without performing  
25 a bona fide inspection of the emission control devices and systems on the vehicle as required by  
26 Health and Safety Code section 44012.

27 ///

28 ///



1 or which by exercise of reasonable care he should have known were untrue or misleading by  
2 issuing electronic Certificate of Compliance No. VP795430C for the 1996 Chevrolet Astro,  
3 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,  
4 the vehicle could not have passed the visual portion of the smog inspection because the vehicle's  
5 PCV system was missing.

6 **EIGHTH CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 22. Respondent has subjected his registration to discipline under Code section  
9 9884.7, subdivision (a)(4), in that on or about June 26, 2008, he committed acts which constitute  
10 fraud by issuing electronic Certificate of Compliance No. VP795430C for the 1996 Chevrolet  
11 Astro without performing a bona fide inspection of the emission control devices and systems on  
12 that vehicle, thereby depriving the People of the State of California of the protection afforded by  
13 the Motor Vehicle Inspection Program.

14 **NINTH CAUSE FOR DISCIPLINE**

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

16 23. Respondent has subjected his station license to discipline under Health and  
17 Safety Code section 44072.2, subdivision (a), in that on or about June 26, 2008, with regard to  
18 the 1996 Chevrolet Astro, he violated sections of that Code, as follows:

19 a. **Section 44012, subdivision (a):** Respondent failed to determine that all  
20 emission control devices and systems required by law were installed and functioning correctly in  
21 accordance with test procedures.

22 b. **Section 44012, subdivision (f):** Respondent failed to perform emission  
23 control tests on those vehicles in accordance with procedures prescribed by the department.

24 c. **Section 44015, subdivision (b):** Respondent issued electronic  
25 Certificate of Compliance No. VP795430C for that vehicle without properly testing and  
26 inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

27 ///

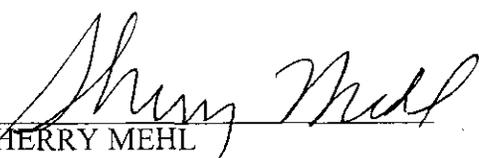
28 ///





- 1                   3.     Revoking or suspending Smog Check Station License Number RC 096133
- 2 issued to Craig Ferguson doing business as Fergusons Auto Center;
- 3                   4.     Revoking or suspending any other license issued under this chapter in the
- 4 name of Craig Ferguson doing business as Fergusons Auto Center;
- 5                   5.     Ordering Craig Ferguson to pay the Bureau of Automotive Repair the
- 6 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
- 7 125.3; and,
- 8                   6.     Taking such other and further action as deemed necessary and proper.
- 9

10 DATED: 2/2/09

11  
12   
13 SHERRY MEHL  
14 Chief  
15 Bureau of Automotive Repair  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant