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

11
12 In the Matter of the Accusation Against:

Case No. 79/11-28

13 **CAL SMOG INSPECTION, DBA,**
14 **CAL SMOG INSPECTION CENTER INC.;**
3215 Hamner Avenue, Bldg. C
Norco, CA 92860-1939
15 **ALEXANDER TAN, PRESIDENT**
Automotive Repair Dealer Registration
16 **No. ARD 108204**
Smog Check, Test Only, Station License
17 **No. TC 108204**

A C C U S A T I O N

SMOG CHECK

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

24 **Automotive Repair Dealer Registration**

25 2. On or about February 29, 1984, the Bureau issued Automotive Repair Dealer
26 Registration Number ARD 108204 ("registration") to Cal Smog Inspection, doing business as Cal
27 Smog Inspection Center Inc.; ("Respondent") with Feliciano Lu Tan as President. On November
28 23, 2009, Alexander Tan became the President. The registration was in full force and effect at all

1 times relevant to the charges brought herein and will expire on February 28, 2011, unless
2 renewed.

3 **Smog Check Test Only Station License**

4 3. On or about November 15, 2002, the Bureau issued Smog Check Test Only Station
5 License Number TC 108204 ("station license") to Respondent. The station license was in full
6 force and effect at all times relevant to the charges brought herein and will expire on February 28,
7 2011, unless renewed.

8 **STATUTORY PROVISIONS**

9 4. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
10 part:

11 (a) The director, where the automotive repair dealer cannot show there
12 was a bona fide error, may deny, suspend, revoke, or place on probation the
13 registration of an automotive repair dealer for any of the following acts or omissions
14 related to the conduct of the business of the automotive repair dealer, which are done
15 by the automotive repair dealer or any automotive technician, employee, partner,
16 officer, or member of the automotive repair dealer.

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

20 (2) Causing or allowing a customer to sign any work order that does not
21 state the repairs requested by the customer or the automobile's odometer reading at
22 the time of repair.

23 (4) Any other conduct that constitutes fraud.

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

26 (b) Except as provided for in subdivision (c), if an automotive repair
27 dealer operates more than one place of business in this state, the director pursuant to
28 subdivision (a) shall only suspend, revoke, or place on probation the registration of
the specific place of business which has violated any of the provisions of this chapter.
This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or
place on probation the registration for all places of business operated in this state by
an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

1 5. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
2 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
3 proceeding against an automotive repair dealer or to render a decision invalidating a registration
4 temporarily or permanently.

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

9 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
10 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
11 the Motor Vehicle Inspection Program.

12 8. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

27 10. Section 44072.8 of the Health and Safety Code states:

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

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1 **COST RECOVERY**

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

6 **UNDERCOVER OPERATION – JANUARY 27, 2010**

7 12. On January 27, 2010, a Bureau undercover (“operator”) drove a Bureau-documented
8 1997 Pontiac Grand Am to Respondent’s facility for a smog inspection. The vehicle could not
9 pass a smog inspection because the vehicle’s fuel evaporative canister was missing. Jon Kelly
10 Gifford, a licensed technician, performed the smog inspection and issued electronic Certificate of
11 Compliance No. WF974329, certifying that he had tested and inspected the 1997 Pontiac Grand
12 Am and that the vehicle was in compliance with applicable laws and regulations. In fact, the
13 vehicle could not have passed the visual portion of the smog inspection because the vehicle’s fuel
14 evaporative canister was missing.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 13. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,
18 subdivision (a)(1), in that on or about January 27, 2010, Respondent made or authorized
19 statements which it knew or in the exercise of reasonable care it should have known to be untrue
20 or misleading by issuing electronic Certificate of Compliance No. WF974329 for the 1997
21 Pontiac Grand Am, certifying that the vehicle was in compliance with applicable laws and
22 regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection
23 because the vehicle’s fuel evaporative canister was missing.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Failure to Document Current Odometer Reading on Work Order)**

26 14. Respondent’s registration is subject to discipline pursuant to Code section 9884.7,
27 subdivision (a)(2), in that on or about January 27, 2010, Respondent allowed the operator to sign
28 Work Order No. 128605, which did not contain the vehicle’s current odometer reading.

1 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
2 Compliance No. WF974329, certifying that the vehicle had been inspected as required when, in
3 fact, it had not.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

7 18. Respondent's station license is subject to discipline pursuant to Health & Safety Code
8 section 44072.2, subdivision (c), in that on or about January 27, 2010, regarding the 1997 Pontiac
9 Grand Am, Respondent failed to comply with provisions of California Code of Regulations, title
10 16, as follows:

11 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
12 electronic Certificate of Compliance No. WF974329, in that the vehicle could not pass the visual
13 portion of the smog inspection because the vehicle's fuel evaporative canister was missing.

14 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
15 Compliance No. WF974329 even though that vehicle had not been inspected in accordance with
16 section 3340.42.

17 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on that
18 vehicle in accordance with the Bureau's specifications.

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 19. Respondent's station license is subject to discipline pursuant to Health & Safety Code
22 section 44072.2, subdivision (d), in that on or about January 27, 2010, Respondent committed
23 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate
24 of Compliance No. WF974329 for the 1997 Pontiac Grand Am without performing a bona fide
25 inspection of the emission control devices and systems on that vehicle, thereby depriving the
26 People of the State of California of the protection afforded by the Motor Vehicle Inspection
27 Program.
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PRIOR CITATIONS

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2 20. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges as follows:

4 a. On or about October 28, 2008, the Bureau issued Citation No. C09-0483 against
5 Respondent's registration and station licenses for violations of Health & Safety Code section
6 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
7 according to procedures prescribed by the department); and, California Code of Regulations, title
8 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a
9 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover
10 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
11 assessed civil penalties totaling \$500 against Respondent for the violations.

12 b. On or about April 22, 2009, the Bureau issued Citation No. C09-1221 against
13 Respondent's registration and station licenses for violations of Health & Safety Code section
14 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
15 according to procedures prescribed by the department); and, California Code of Regulations, title
16 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a
17 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover
18 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
19 assessed civil penalties totaling \$1,000 against Respondent for the violations.

20 c. On or about September 29, 2009, the Bureau issued Citation No. C2010-0276 against
21 Respondent's registration and station licenses for violations of Health & Safety Code section
22 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
23 according to procedures prescribed by the department); and, California Code of Regulations, title
24 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a
25 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover
26 vehicle with a missing exhaust gas recirculation valve. The Bureau assessed civil penalties
27 totaling \$2,000 against Respondent for the violations.

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1 5. Ordering Cal Smog Inspection, dba, Cal Smog Inspection Center Inc. to pay the
2 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
3 case, pursuant to Business and Professions Code section 125.3; and,

4 6. Taking such other and further action as deemed necessary and proper.

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6 DATED: 10/13/10


7 SHERRY MEHL
8 Chief
9 Bureau of Automotive Repair
10 Department of Consumer Affairs
11 State of California
12 *Complainant*

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