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

In the Matter of the Accusation Against: **YORBA LINDA TEST ONLY SMOG CHECK** **KYEONG SOOK KIM, OWNER** 17071 Imperial Highway, Suite A9 Yorba Linda, California 92886 Automotive Repair Dealer Registration No. ARD 226705 Smog Check-Test Only Station License No. TC 226705 Respondent.	Case No. 79/13-55 **ACCUSATION** **SMOG CHECK**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On March 28, 2003, the Bureau of Automotive Repair issued Automotive Repair Dealer (ARD) Registration Number 226705 to Respondent Kyeong Sook Kim, Owner of Yorba Linda Test Only Smog Check. Respondent's ARD registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

Smog Check Test Only Station License

3. On April 15, 2003, the Bureau of Automotive Repair issued Smog Check-Test Only Station License (station license) Number TC 226705 to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

JURISDICTION

4. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau, under the authority of the following laws.

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

6. Health and Safety Code (H & S Code) section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

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

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

. . . .

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

. . . .

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

. . . .

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9. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation 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 that constitutes fraud.

. . . .

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

. . . .

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to 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 her 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.

STATUTORY PROVISIONS

10. H & S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

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

. . . .

(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.

. . . .

11. H & S Code section 44015 states, in pertinent part:

. . . .

(b) 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.

. . . .

12. H & S Code section 44059 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

13. H & S Code section 44072.2 states, in pertinent part:

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

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

. . . .

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

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

. . . .

14. H & S Code section 44072.8 states:

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.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16 (Regulations), section 3340.24 states, in pertinent part:

. . . .

(c) 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.

16. Section 3340.35, subdivision (c) of the Regulations states:

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. The following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

17. Section 3340.42 of the Regulations states:

With the exception of diesel-powered vehicles addressed in subsection (f) of this section, the following emissions test methods and standards apply to all vehicles:

. . . .

(e) In addition to the test methods prescribed in this section, the following tests shall apply to all vehicles, except diesel-powered vehicles, during the Smog Check inspection:

(1) A visual inspection of the vehicle's emissions control systems. During the visual inspection, the technician shall verify that the following emission control devices, as applicable, are properly installed on the vehicle:

(A) air injection systems,

(B) computer(s) and related sensors and switches,

(C) crankcase emissions controls, including positive crankcase ventilation,

(D) exhaust gas after treatment systems, including catalytic converters,

(E) exhaust gas recirculation (EGR) systems,

(F) fuel evaporative emission controls,

(G) fuel metering systems, including carburetors and fuel injection,

(H) ignition spark controls, and

(I) any emissions control systems that are not otherwise prompted by the Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

. . . .

(f) On or after January 1, 2010, all 1998 model year and newer diesel-powered vehicles, with a gross vehicle weight rating of 14,000 or less pounds, are subject to the Smog Check Program. The following required inspections apply to all diesel-powered vehicles:

(1) A visual inspection of the vehicle's emissions control systems. During the visual inspection, the technician shall verify that the following emission control devices, as applicable, are properly installed on the vehicle:

(A) computer(s) and related sensors and switches,

(B) crankcase emissions controls,

(C) exhaust gas after treatment systems, including catalytic converters and particulate filters,

(D) exhaust gas recirculation (EGR) systems,

(E) fuel metering systems, including fuel injection, and

(F) any emissions control systems that are not otherwise prompted by the Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.

. . . .

COST RECOVERY

18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

UNDERCOVER OPERATION: 1984 FORD F-250 TRUCK

19. On April 5, 2012, in preparation for an undercover operation at Respondent's smog testing station, Yorba Linda Test Only Smog Check, the Bureau prepared one of its vehicles, a 1984 Ford F-250 Truck, to fail a proper smog inspection due to a modified carburetor and disconnected evaporative emission control system hoses. On that same date, the Bureau performed a post-modification smog check on the vehicle, including an Acceleration Simulation

Mode (ASM) test. The vehicle failed the visual portion of the inspection due to a modified carburetor and disconnected evaporative emission control system hoses, as confirmed by the Vehicle Inspection Report (VIR) for the tested vehicle, and as it was modified to do.

20. On April 24, 2012, a Bureau undercover operator took the vehicle to Respondent's smog station and requested a smog check inspection using the assumed name of Jack Schmidt. The operator signed a work order and received an estimate copy from an employee of Respondent's smog station. After the vehicle was tested, the operator paid the employee $68.00 and received a copy of invoice number 44678 showing a breakdown of the $68.00 charged. The operator also received a VIR from the employee indicating that the vehicle passed the visual inspection, functional check, and emissions test conducted by Respondent Alejandro Nunez, Advanced Emission Specialist Technician License Number EA 631311. The VIR indicated that Smog Check Certificate Number XF973752 had been electronically transmitted to the Department of Motor Vehicles from station number TC 226705, which corresponds to the station license number issued to Respondent. The operator then returned the vehicle to Bureau custody.

21. Later that same day, Bureau personnel re-inspected the vehicle after the smog test at Respondent's smog station. The condition of the vehicle as modified before testing at Respondent's smog station had not changed; the previously modified carburetor had not been replaced and the evaporative emission control system hoses remained disconnected.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

22. Respondent has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on April 24, 2012, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading when she issued electronic Certificate of Compliance No. XF973752 for the 1984 Ford F-250 Truck, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had a modified carburetor and disconnected evaporative emission control system hoses and was not in compliance with those laws and regulations.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

23. Respondent has subjected her registration to discipline under Code section 9884.7, subdivision (a)(4), in that on April 24, 2012, she committed acts which constitute fraud by issuing electronic Certificate of Compliance No. XF973752 for the 1984 Ford F-250 Truck without performing a bona fide visual inspection of the carburetor and evaporative emission control system hoses on the vehicle.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

24. Respondent has subjected her station license to discipline under H & S Code section 44072.2, subdivision (a), in that on April 24, 2012, regarding the 1984 Ford F-250 Truck, she violated the following sections of that Code:

a. **Section 44012, subdivision (f)**: Respondent failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate of Compliance No. XF973752 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of Compliance No. XF973752 by certifying that the vehicle had been inspected as required when, in fact, it had not.

FOURTH CAUSE FOR DISCIPLINE

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

25. Respondent has subjected her station license to discipline under H & S Code section 44072.2, subdivision (c), in that on April 24, 2012, regarding the 1984 Ford F-250 Truck, she violated the following sections of the Regulations:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. XF973752 without performing a bona fide

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inspection of the carburetor and evaporative emission control system hoses on the vehicle as required by H & S Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. XF973752 even though the vehicle had not been inspected in accordance with H & S Code section 3340.42.

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

26. Respondent has subjected her station license to discipline under H & S Code section 44072.2, subdivision (d), in that on April 24, 2012, regarding the 1984 Ford F-250 Truck, she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. XF973752 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the citizens of the State of California the benefits of the Motor Vehicle Inspection Program.

MATTERS IN AGGRAVATION

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

a. On June 26, 2003, the Bureau issued Citation No. C03-1301 to Respondent, for violations of H & S Code section 44012, subdivision (f) (failure to perform a visual and functional check of emission control devices according to procedures prescribed by the department); and Regulations, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On July 9, 2003, a citation conference was held. The Bureau assessed civil penalties totaling $500.00 against Respondent for the violations. Respondent paid the fine on July 25, 2003.

b. On March 25, 2009, the Bureau issued Citation No. C09-1096 against Respondent, for violations of H & S Code section 44012, subdivision (f) (failure to perform a visual and functional check of emission control devices according to procedures prescribed by

the department); and Regulations, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On April 9, 2009, a citation conference was held. The Bureau assessed civil penalties totaling $500.00 against Respondent for the violations. Respondent paid the fine on April 13, 2009.

c. On September 1, 2009, the Bureau issued Citation No. C2010-0167 against Respondent, for violations of H & S Code section 44012, subdivision (f) (failure to determine that emission control devices and systems required by state and federal law are installed and functioning correctly in accordance with test procedures); and Regulations, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On September 25, 2009, a citation conference was held. The Bureau assessed civil penalties totaling $1,000.00 against Respondent for the violations. Respondent paid the fine on October 21, 2009.

c. On June 7, 2011, the Bureau issued Citation No. C2011-1457 against Respondent, for violations of H & S Code section 44012, subdivision (f) (failure to determine that emission control devices and systems required by state and federal law are installed and functioning correctly in accordance with test procedures). On June 23, 2011, a citation conference was held. The Bureau assessed civil penalties totaling $1,500.00 against Respondent for the violation. Respondent paid the fine on July 19, 2011.

OTHER MATTERS

28. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Kyeong Sook Kim, owner of Yorba Linda Test Only Smog Check, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

29. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 226705, issued to Respondent Kyeong Sook Kim, owner of Yorba Linda Test Only Smog Check, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number 226705, issued to Respondent Kyeong Sook Kim, owner of Yorba Linda Test Only Smog Check;

2. Revoking or suspending any other automotive repair dealer registration issued to Kyeong Sook Kim;

3. Revoking or suspending Smog Check-Test Only Station License Number TC 226705, issued to Kyeong Sook Kim, owner of Yorba Linda Test Only Smog Check;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Kyeong Sook Kim;

5. Ordering Kyeong Sook Kim to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/26/13

John Wallauch by Doug Balanti

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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