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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. 79/10-55

13 **DUARTE SMOG TEST ONLY**
1721 East Huntington Drive
Duarte, CA 91010

A C C U S A T I O N
S M O G C H E C K

14 **Mailing Address:**
2558 Elda Street
15 Duarte, CA 91010
16 **KEVORK K. NIZIAN, OWNER**
Automobile Repair Dealer Registration
17 No. ARD 235741
Smog Check Test Only Station License
18 No. TC 235741

Respondent.

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20
21 Complainant alleges:

22 **PARTIES**

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

25 **Automotive Repair Dealer Registration**

26 2. On or about September 23, 2004, the Bureau issued Automobile Repair Dealer
27 Registration Number ARD 235741 ("registration") to Kevork K. Nizian ("Respondent") doing
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1 business as Duarte Smog Test Only. The registration was in full force and effect at all times
2 relevant to the charges brought herein and will expire on September 30, 2010, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about October 19, 2004, the Bureau issued Smog Check Test Only Station
5 License Number TC 235741 ("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 September
7 30, 2010, 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 refuse to validate, or may invalidate temporarily or
13 permanently, the registration of an automotive repair dealer for any of the following
14 acts or omissions related to the conduct of the business of the automotive repair
15 dealer, which are done by the automotive repair dealer or any automotive technician,
16 employee, partner, officer, or member of the automotive repair dealer.

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

17 (4) Any other conduct which constitutes fraud.

18 (6) Failure in any material respect to comply with the provisions of this
19 chapter [the Automotive Repair Act (Bus. & Prof. Code, 9880, et seq.)] or regulations
20 adopted pursuant to it.

20 (b) Except as provided for in subdivision (c), if an automotive repair
21 dealer operates more than one place of business in this state, the director pursuant to
22 subdivision (a) shall only invalidate temporarily or permanently the registration of the
23 specific place of business which has violated any of the provisions of this chapter.
24 This violation, or action by the director, shall not affect in any manner the right of the
25 automotive repair dealer to operate his or her other places of business.

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

26 5. Code section 9884.9, subdivision (a), states:

27 (a) The automotive repair dealer shall give to the customer a written
28 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

1 customer. No charge shall be made for work done or parts supplied in excess of the
2 estimated price without the oral or written consent of the customer that shall be
3 obtained at some time after it is determined that the estimated price is insufficient and
4 before the work not estimated is done or the parts not estimated are supplied. Written
5 consent or authorization for an increase in the original estimated price may be
6 provided by electronic mail or facsimile transmission from the customer. The bureau
7 may specify in regulation the procedures to be followed by an automotive repair
8 dealer if an authorization or consent for an increase in the original estimated price is
9 provided by electronic mail or facsimile transmission. If that consent is oral, the
10 dealer shall make a notation on the work order of the date, time, name of person
11 authorizing the additional repairs and telephone number called, if any, together with a
12 specification of the additional parts and labor and the total additional cost, and shall
13 do either of the following:

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

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

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

21 _____
22 (signature or initials)"

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

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

1 "Board" includes "bureau,"
2 "commission," "committee," "department," "division," "examining committee," "program," and
3 "agency." "License" includes certificate, registration or other means to engage in a business or
4 profession regulated by the Code.

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

1 vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not
2 have passed the smog inspection because the vehicle's ignition timing was adjusted beyond
3 specifications.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 14. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
7 subdivision (a)(1), in that on or about April 8, 2009, Respondent made or authorized statements
8 which he knew or in the exercise of reasonable care he should have known to be untrue or
9 misleading by issuing electronic Certificate of Compliance No. VZ083344 for the 1992 Nissan
10 Maxima, certifying that the vehicle was in compliance with applicable laws and regulations. In
11 fact, the vehicle could not have passed the smog inspection because the vehicle's ignition timing
12 was adjusted beyond specifications.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 15. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
16 subdivision (a)(4), in that on or about April 8, 2009, he committed acts which constitute fraud by
17 issuing electronic Certificate of Compliance No. VZ083344 for the 1992 Nissan Maxima without
18 performing a bona fide inspection of the emission control devices and systems on that vehicle,
19 thereby depriving the People of the State of California of the protection afforded by the Motor
20 Vehicle Inspection Program.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Code)**

23 16. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
24 subdivision (a)(6), in that on or about April 8, 2009, Respondent failed to comply with Code
25 section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price
26 for parts and labor for a specific job, prior to commencement of repairs.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 17. Respondent's station license is subject to discipline pursuant to Health & Safety Code
4 section 44072.2, subdivision (a), in that on or about April 8, 2009, regarding the 1992 Nissan
5 Maxima, Respondent failed to comply with the following sections of that Code:

6 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
7 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 control tests
10 on that vehicle in accordance with procedures prescribed by the department.

11 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
12 Compliance No. VZ083344 without properly testing and inspecting that vehicle to determine if it
13 was in compliance with Health & Safety Code section 44012.

14 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
15 Compliance No. VZ083344, by certifying that the vehicle had been inspected as required when,
16 in fact, it had not.

17 **FIFTH CAUSE FOR DISCIPLINE**

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

20 18. Respondent's station license is subject to discipline pursuant to Health & Safety Code
21 section 44072.2, subdivision (c), in that on or about April 8, 2009, regarding the 1992 Nissan
22 Maxima, Respondent failed to comply with provisions of California Code of Regulations, title 16,
23 as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic Certificate of Compliance No. VZ083344, in that the vehicle could not pass the smog
26 inspection because the vehicle's ignition timing was adjusted beyond specifications.

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1 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
2 according to procedures prescribed by the department), and California Code of Regulations, title
3 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a
4 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover
5 vehicle with a missing positive crankcase ventilation system. The Bureau assessed civil penalties
6 totaling \$1,000 against Respondent for the violations. Respondent complied with this citation on
7 July 7, 2008.

8 c. On or about December 19, 2008, the Bureau issued Citation No. C09-0743 against
9 Respondent's registration and smog station licenses for violations of Health & Safety Code
10 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
11 devices according to procedures prescribed by the department), and California Code of
12 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
13 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
14 Bureau undercover vehicle with a missing evaporative control canister. The Bureau assessed
15 civil penalties totaling \$2,000 against Respondent for the violations. Respondent complied with
16 this citation on February 4, 2009.

17 **OTHER MATTERS**

18 21. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
19 or permanently or refuse to validate, the registrations for all places of business operated in this
20 state by to Kevork K. Nizian doing business as Duarte Smog Test Only, upon a finding that he
21 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
22 pertaining to an automotive repair dealer.

23 22. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
24 License Number TC 235741, issued to Kevork K. Nizian doing business as Duarte Smog Test
25 Only, is revoked or suspended, any additional license issued under this chapter in the name of
26 said licensee may be likewise revoked or suspended by the director.

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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. Temporarily or permanently invalidating Automobile Repair Dealer Registration Number ARD 235741, issued to Kevork K. Nizian doing business as Duarte Smog Test Only;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Kevork K. Nizian;
3. Revoking or suspending Smog Check Test Only Station License Number TC 235741, issued to Kevork K. Nizian doing business as Duarte Smog Test Only;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Kevork K. Nizian;
5. Ordering Kevork K. Nizian 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; and,
6. Taking such other and further action as deemed necessary and proper.

DATED: _____

3/1/10


SHERRY MEHL

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

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