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

13 In the Matter of the Accusation Against:

Case No. 79/12-71

14 **CHULA VISTA SMOG**
15 **PATRICIA ANAYA MARTIN, OWNER**
16 **3031 Main Street, Suite D**
17 **Chula Vista, CA 91911**
18 **Automotive Repair Dealer Reg. No. ARD 244202**
Smog Check, Test Only, Station License No.
TC 244202

A C C U S A T I O N

(Smog Check)

Respondent.

19 Complainant alleges:

20 **PARTIES**

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

23 2. In or about 2006, the Director of Consumer Affairs ("Director") issued Automotive
24 Repair Dealer Registration Number ARD 244202 ("registration") to Patricia Anaya Martin
25 ("Respondent"), owner of Chula Vista Smog. Respondent's registration was in full force and
26 effect at all times relevant to the charges brought herein and will expire on March 31, 2012,
27 unless renewed.

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(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.

9. Bus. & Prof. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

10. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

11. Health & Saf. 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 (Health and Saf. 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 . . .

12. Health & Saf. Code section 44072.8 states that 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.

COST RECOVERY

13. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a 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.

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1 emission control devices and systems on the vehicle, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

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

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

8 a. **Section 44012, subdivision (f)**: Respondent failed to ensure that the visual
9 inspection of the emission control systems and devices on the Bureau's 2001 Honda Prelude was
10 performed in accordance with procedures prescribed by the department.

11 b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for
12 the Bureau's 2001 Honda Prelude without ensuring that the vehicle was properly tested and
13 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

14 **FOURTH CAUSE FOR DISCIPLINE**

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

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

20 a. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate
21 of compliance for the Bureau's 2001 Honda Prelude even though the vehicle had not been
22 inspected in accordance with section 3340.42.

23 b. **Section 3340.42**: Respondent failed to ensure that the required smog tests were
24 conducted on the Bureau's 2001 Honda Prelude in accordance with the Bureau's specifications.

25 **FIFTH CAUSE FOR DISCIPLINE**

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

27 20. Respondent's smog check station license is subject to disciplinary action pursuant to
28 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,

1 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an
2 electronic smog certificate of compliance for the Bureau's 2001 Honda Prelude without ensuring
3 that a bona fide inspection was performed of the emission control devices and systems on the
4 vehicle, thereby depriving the People of the State of California of the protection afforded by the
5 Motor Vehicle Inspection Program.

6 **MATTERS IN AGGRAVATION**

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

9 a. On or about April 12, 2007, the Bureau issued Citation No. C07-0737 against
10 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
11 perform a visual/functional check of emission control devices according to procedures prescribed
12 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,
13 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
14 or about March 29, 2007, Respondent issued a certificate of compliance to a Bureau undercover
15 vehicle with a missing EGR valve. The Bureau assessed civil penalties totaling \$500 against
16 Respondent for the violations. Respondent paid the fine on June 8, 2007.

17 b. On or about October 31, 2008, the Bureau issued Citation No. C09-0531 against
18 Respondent for violating Regulation 3340.16, subdivision (d) (a smog check test-only station
19 shall not engage in any automotive repair work. On or about October 17, 2008, Respondent
20 performed an ignition timing adjustment on a Bureau undercover vehicle and issued Certificate of
21 Compliance #VT934453. The Bureau assessed a civil penalty of \$500 against Respondent for the
22 violation. Respondent paid the fine on December 3, 2008.

23 c. On or about May 19, 2009, the Bureau issued Citation No. C09-1333 against
24 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
25 determine that emission control devices and systems required by State and Federal law are
26 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,
27 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
28 or about May 7, 2009, Respondent issued a certificate of compliance to a Bureau undercover

1 vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil
2 penalties totaling \$1,000 against Respondent for the violations. Respondent paid the fine on June
3 29, 2009.

4 d. On or about August 28, 2009, the Bureau issued Citation No. C2010-0155 against
5 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
6 perform a visual/functional check of emission control devices according to procedures prescribed
7 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
8 to a vehicle that was improperly tested). On or about August 6, 2009, Respondent issued a
9 certificate of compliance to a Bureau undercover vehicle with a missing PCV system. The
10 Bureau assessed civil penalties totaling \$2,000 against Respondent for the violations. Respondent
11 paid the fine on October 13, 2009.

12 OTHER MATTERS

13 22. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
14 suspend, revoke, or place on probation the registration for all places of business operated in this
15 state by Respondent Patricia Anaya Martin, owner of Chula Vista Smog, upon a finding that
16 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
17 regulations pertaining to an automotive repair dealer.

18 23. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
19 License Number TC 244202, issued to Respondent Patricia Anaya Martin, owner of Chula Vista
20 Smog, is revoked or suspended, any additional license issued under this chapter in the name of
21 said licensee may be likewise revoked or suspended by the director.

22 PRAYER

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

25 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
26 244202, issued to Patricia Anaya Martin, owner of Chula Vista Smog;

27 2. Revoking or suspending any other automotive repair dealer registration issued to
28 Patricia Anaya Martin;

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- 3. Revoking or suspending Smog Check, Test Only, Station License Number TC 244202, issued to Patricia Anaya Martin, owner of Chula Vista Smog.
- 4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Patricia Anaya Martin;
- 5. Ordering Patricia Anaya Martin, owner of Chula Vista Smog, to pay the Director of Consumer Affairs 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: 2/1/12



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