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

12
13
14 In the Matter of the Accusation and Petition to Revoke
Probation Against:

15 **AMIR SAIFULLAH SHAH**
16 **dba GOLDEN STAR SMOG**
17 **2484 Olivera Road**
Concord, CA 94520

18 **Mailing Address:**
19 **2505 Bugle Way**
Antioch, CA 94531

20 **Automotive Repair Dealer No. ARD 266219**
Smog Check Test Only Station License No. TC 266219

21 **AMIR SAIFULLAH SHAH**
22 **2505 Bugle Way**
Antioch, CA 94531

23 **Smog Check Inspector License No. EO 154238**

24 Respondent.

Case No. 7918-19457

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

25
26 Complainant alleges:

27 ///

28 ///

1 **PARTIES**

2 1. Patrick Dorais (Complainant) brings this Accusation and Petition to Revokes
3 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair,
4 Department of Consumer Affairs.

5 2. On or about August 11, 2011, the Bureau of Automotive Repair issued Automotives
6 Repair Dealer Registration Number ARD 266219 to Amir Saifullah Shah (Respondent) dba
7 Golden Star Smog. The Automotive Repair Dealer Registration was in full force and effect at all
8 times relevant to the charges brought herein and will expire on August 31, 2019, unless renewed.

9 3. On or about August 25, 2011, the Bureau of Automotive Repair issued Smog Check,s
10 Test Only, Station License Number TC 266219 to Respondent. The Smog Check, Test Only,
11 Station License will expire on August 31, 2019, unless renewed.

12 4. In 2007, the Bureau of Automotive Repair issued Advanced Emission Specialists
13 Technician License Number EA 154238 to Respondent. The license was cancelled on June 4,
14 2013. Thereafter the license was renewed pursuant to Respondent's election as a Smog Check
15 Inspector License No. EO 154238, effective June 4, 2013.¹ The Smog Check Inspector License
16 was in full force and effect at all times relevant to the charges brought herein and will expire on
17 May 31, 2019, unless renewed.

18 5.s In a disciplinary action entitled "In the Matter of the Accusation Against: Amirs
19 Saifullah Shah, dba Golden Star Smog," Case No. 79/16-7674, the Bureau of Automotive Repair
20 issued a Decision and Order effective December 29, 2017, in which Respondent's Automotive
21 Repair Dealer Registration and Smog Check Stations License were revoked. However, the
22 revocations were stayed and Respondent's Automotive Repair Dealer Registration and Smog
23 Check Stations License were placed on probation for two (2) years with certain terms and
24 conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by
25 reference.

26
27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
28 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

1 **JURISDICTION**

2 6.e This Accusation and Petition to Revoke probation is brought before the Director ofe
3 the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the
4 authority of the following laws.

5 **STATUTORY PROVISIONS**

6 7.e Section 477 of the Business and Professions Code provides, in pertinent part, thate
7 “Board” includes “bureau,” “commission,” “committee,” “department,” “division,” “examining
8 committee,” “program,” and “agency.” “License” includes certificate, registration or other means
9 to engage in a business or profession regulated by the code.

10 8.e Section 9884.7 of the Code states:e

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

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

19 ...
20 (4)eAny other conduct which constitutes fraud.e

21 ...
22 (6)eFailure in any material respect to comply with the provisions of this chapter ore
23 regulations adopted pursuant to it.

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

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9.a Section 9884.8 of the Code states:a

“All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.”

10.a Section 9884.9 of the Code states:a

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

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

3 “(2) Upon completion of the repairs, obtain the customer’s signature or initials to an
4 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
5 repairs, in the following language:

6 “I acknowledge notice and oral approval of an increase in the original estimated price.
7 _____

8 (signature or initials)”

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

11 ...”

12 11.e Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valide
13 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
14 proceeding against an automotive repair dealer or to render a decision invalidating a registration
15 temporarily or permanently.

16 12.e Section 44002 of the Health and Safety Code provides, in pertinent part, that thee
17 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
18 the Motor Vehicle Inspection Program.

19 13.e Section 44012 of the Health and Safety Code states:e

20 “The test at the smog check stations shall be performed in accordance with procedures
21 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
22 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
23 and shall ensure all of the following:

24 ...

25 “(f) A visual or functional check is made of emission control devices specified by the
26 department, including the catalytic converter in those instances in which the department
27 determines it to be necessary to meet the findings of Section 44001. The visual or functional
28 check shall be performed in accordance with procedures prescribed by the department.

1 ...”

2 14.e Section 44015 of the Health and Safety Code states:e

3 “(a) A licensed smog check station shall not issue a certificate of compliance, except as
4 authorized by this chapter, to any vehicle that meets the following criteria:

5 “(1) A vehicle that has been tampered with.

6

7 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
8 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

9 ...”

10 15.e Section 44032 of the Health and Safety Code states:e

11 “No person shall perform, for compensation, tests or repairs of emission control devices or
12 systems of motor vehicles required by this chapter unless the person performing the test or repair
13 is a qualified smog check technician and the test or repair is performed at a licensed smog check
14 station. Qualified technicians shall perform tests of emission control devices and systems in
15 accordance with Section 44012.”

16 16.e Section 44072.2 of the Health and Safety Code states:e

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

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

23

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

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

26

27 “(h) Violates or attempts to violate the provisions of this chapter relating to the particular
28 activity for which he or she is licensed.”

1 “(1) A visual inspection of emission control components and systems to verify the vehicle’s
2 emission control systems are properly installed.

3 “(2) A functional inspection of emission control systems as specified in the Smog Check
4 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
5 operation.

6 ...”

7 22.s California Code of Regulations, title 16, section 3340.45, states:s

8 “(a) All Smog Check inspections shall be performed in accordance with requirements and
9 procedures prescribed in the following:

10 ...

11 “(2) Smog Check Manual, dated November 2, 2017, which is hereby incorporated by
12 reference. This manual shall become effective on August 2, 2018.”

13 23.s California Code of Regulations, title 16, section 3353, states:s

14 “No work for compensation shall be commenced and no charges shall accrue without
15 specific authorization from the customer in accordance with the following requirements:

16 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
17 estimated price for labor and parts for a specific job.

18 ...”

19 24.s California Code of Regulations, title 16, section 3371, states:s

20 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
21 or misleading statement or advertisement which is known to be false or misleading, or which by
22 the exercise of reasonable care should be known to be false or misleading. Advertisements and
23 advertising signs shall clearly show the following:

24 “(a) Firm Name and Address. The dealer’s firm name and address as they appear on the
25 State registration certificate as an automotive repair dealer; and

26 “(b) Telephone Number. If a telephone number appears in an advertisement or on an
27 advertising sign, this number shall be the same number as that listed for the dealer’s firm name
28

1 and address in the telephone directory, or in the telephone company records if such number is
2 assigned to the dealer subsequent to the publication of such telephone directory.”

3 25.e California Code of Regulations, title 16, section 3373, states:e

4 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
5 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
6 withhold therefrom or insert therein any statement or information which will cause any such
7 document to be false or misleading, or where the tendency or effect thereby would be to mislead
8 or deceive customers, prospective customers, or the public.”

9 COSTS

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

16 FACTUAL BACKGROUND

17 27.e On or about October 30, 2018 through November 1, 2018, a Bureau Representative
18 prepared a 2002 Dodge (Dodge) to fail a smog inspection due to the removal of the Positive
19 Crankcase Ventilation (PCV) valve and hose assembly. The Bureau Representative installed a
20 non-approved open breather element in place of the PCV valve and large vacuum cap on the PCV
21 valve intake manifold vacuum supply port. In this condition the Dodge would not pass a properly
22 performed smog inspection. The Dodge would fail the visual portion of the smog inspection.

23 28.e On or about November 15, 2018, an undercover operation was performed at
24 Respondent’s smog check station to confirm compliance with the Smog Check Program. An
25 operator drove the Dodge to Golden Star Smog and requested a smog inspection from
26 Respondent.

27 29.e Respondent pulled the Dodge into a service bay and performed a smog inspection.e
28 The operator was not given a written estimate prior to the smog inspection. A few minutes later

1 Respondent came into the waiting area and told the operator that the vehicle was ready. The
2 operator was given two copies of an invoice and a Vehicle Inspection Report (VIR). The vehicle
3 passed the smog inspection.

4 30.e Smog Certificate of Compliance # [REDACTED] was issued for the Dodge by
5 Respondent. Respondent entered "Pass" into the OIS for the Visual Inspection category
6 "Crankcase Emission Controls," when in fact Respondent should have entered "Tampered"
7 because the Dodge had been tampered with. The VIR stated "Pass" for the Visual Inspection
8 category "Crankcase Emission Controls." Respondent signed the VIR under penalty of perjury.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (False or misleading Statements)

11 31.e Respondent has subjected his Automotive Repair Dealer Registration to disciplinary
12 action under section 9884.7, subdivision(a)(1), in that Respondent made false or misleading
13 statements that he knew or should have known were false or misleading as follows:

14 a.e Respondent transmitted information to the Vehicle Information Database stating the
15 Dodge had properly installed Crankcase Emission Controls.

16 b. Respondent created a VIR stating the Dodge had properly installed Crankcase
17 Emission Controls.

18 **SECOND CAUSE FOR DISCIPLINE**

19 (Violation of Laws and Regulations)

20 32.e Respondent has subjected his Automotive Repair Dealer Registration to disciplinary
21 action under section 9884.7, subdivision (a)(6), in that Respondent violated the following laws
22 and regulations:

23 a.e Respondent violated Code section 9884.9(a) by failing to provide the operator with a
24 written estimate prior to performing the smog inspection.

25 b.e Respondent violated California Code of Regulations, Title 16, section 3340.24,e
26 subdivision (c), in that Respondent falsely issued a certificate of compliance to the Dodge.
27
28

1 c.e Respondent violated California Code of Regulations, Title 16, section 3340.35,e
2 subdivision (c), in that Respondent issued a certificate of compliance to a vehicle that did not
3 have all the required emission control equipment and devices installed and functioning correctly.

4 d.e Respondent violated California Code of Regulations, Title 16, section 3340.42,e
5 subdivision (b) in that Respondent failed to provide a proper visual inspection of the Dodge.

6 e.e Respondent violated California Code of Regulations, Title 16, section 3340.42, in
7 conjunction with California Code of Regulations, Title 16, section 3340.45, subdivision (b), in
8 that Respondent failed to provide a proper visual inspection on the Dodge as prescribed in the
9 Smog Check Manual.

10 f.e Respondent violated California Code of Regulations, Title 16, section 3353, in that
11 Respondent failed to provide the operator with a written estimate.

12 g.e Respondent violated California Code of Regulations, Title 16, section 3371, in that
13 Respondent made untrue or misleading statements as described in paragraph 25, above.

14 h.e Respondent violated California Code of Regulations, Title 16, section 3373, in that
15 Respondent made untrue or misleading statements on a Vehicle Inspection Report. The Vehicle
16 Inspection Report stated that the vehicle passed the Crankcase Emission Controls visual
17 inspection.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Dishonest or Deceit)

20 33.e Respondent has subjected his Smog Check Station License to disciplinary actione
21 under Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed
22 acts involving dishonesty or deceit whereby another was injured. The circumstances are
23 described in paragraphs 27-31, above.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 (Violation of Laws and Regulations)

26 34.e Respondent has subjected his Smog Check Station License to disciplinary actione
27 under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or (g), in that
28 Respondent violated the following laws and regulations:

1 a.o Respondent violated Health and Safety code section 44012, subdivision (f), in the
2 Respondent failed to perform a smog check on the Dodge according to the procedures prescribed
3 by the department. Respondent failed to perform a proper visual inspection.

4 b.o Respondent violated Health and Safety code section 44015, subdivision (a)(1), in that
5 Respondent issued a certificate of compliance to a vehicle that had been tampered with.

6 c.o Respondent violated California Code of Regulations, Title 16, section 3340.24,
7 subdivision (c), in that Respondent falsely issued a certificate of compliance to the Dodge.

8 d.o Respondent violated California Code of Regulations, Title 16, section 3340.35,
9 subdivision (c), in that Respondent issued a certificate of compliance to a vehicle that did not
10 have all the required emission control equipment and devices installed and functioning correctly.

11 e.o Respondent violated California Code of Regulations, Title 16, section 3340.42,
12 subdivision (b) in that Respondent failed to perform a proper visual inspection of the Dodge.

13 f. Respondent violated California Code of Regulations, Title 16, section 3340.42 in
14 conjunction with California Code of Regulations, Title 16, section 3340.45, subdivision (b), in
15 that Respondent failed to perform a proper visual inspection on the Dodge as prescribed in the
16 Smog Check Manual.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 (Dishonesty or Deceit)

19 35.o Respondent has subjected his Smog Check Inspector License to disciplinary action
20 under Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed
21 acts involving dishonesty, fraud, or deceit whereby another was injured. The circumstances are
22 described in paragraphs 27-31, above.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 (Violation of Laws and Regulations)

25 36.o Respondent has subjected his Smog Check Inspector License to disciplinary action
26 under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or (g), in that
27 Respondent violated the following laws and regulations:

28 ///

1 a.o Respondent violated Health and Safety code section 44012, subdivision (f), in that
2 Respondent failed to perform a smog check on the Dodge according to the procedures prescribed
3 by the department. Respondent failed to perform a proper visual inspection.

4 b.o Respondent violated Health and Safety code section 44032 by failing to perform a
5 smog inspection on the Dodge pursuant to Health and Safety code section 44012.

6 c. Respondent violated California Code of Regulations, Title 16, section 3340.24,
7 subdivision (c), in that Respondent falsely caused a certificate of compliance to be issued to the
8 Dodge.

9 d.o Respondent violated California Code of Regulations, Title 16, section 3340.35,
10 subdivision (c), in that Respondent issued a certificate of compliance to a vehicle that did not
11 have all the required emission control equipment and devices installed and functioning correctly.

12 e.o Respondent violated California Code of Regulations, Title 16, section 3340.42,
13 subdivision (b) in that Respondent failed to provide a proper visual inspection of the Dodge.

14 f.o Respondent violated California Code of Regulations, Title 16, section 3340.42 in
15 conjunction with California Code of Regulations, Title 16, section 3340.45, subdivision (b), in
16 that Respondent failed to provide a proper visual inspection on the Dodge as proscribed in the
17 Smog Check Manual.

18 **ADDITIONAL JURISDICTION FOR PETITION TO REVOKE PROBATION**

19 37.o The Petition to Revoke Probation is brought before the Director for the Bureau of
20 Automotive Repair under Probation Terms and Conditions "A" and "F" of the Decision and
21 Order In the Matter of The Accusation Against Amir Saifullah Shah dba Golden Star Smog, Case
22 No. 79/16-7674. Term and condition "A" states:

23 "A. Obey All Laws

24 "During the period of probation, respondent Shah shall comply with all federal and state
25 statutes, regulations, and rules governing all Bureau registrations and licenses he holds."

26 38.o Term and condition "F" states:

27 "F. Violation of Probation

28

1 "If respondent Shah violates or fails to comply with the terms and conditions of probation
2 in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay
3 order and carry out the disciplinary order provided in this decision. Once respondent Shah
4 receives notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction,
5 and the period of probation shall be extended until final resolution of the matter."

6 **CAUSE TO REVOKE PROBATION**

7 (Violation of Laws and Regulations)

8 39.o Respondent's probation is subject to revocation pursuant to probation term "F"o
9 because Respondent failed to comply with probation term "A," referenced above. Respondent
10 failed obey all laws as described in paragraphs 31-36, above.

11 **OTHER MATTERS**

12 40.o Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,o
13 or place on probation the registration for all places of business operated in this state by
14 Respondent, upon a finding that Respondent has, or is, engaged in a course of repeated and
15 willful violations of the laws and regulations pertaining to an automotive repair dealer.

16 41.o Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Checko
17 Station License or Smog Check Inspector License is revoked or suspended, any additional license
18o issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said
19 licensee may be likewise revoked or suspended by the director.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
22 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
23 Consumer Affairs issue a decision:

24 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Caseo
25 No. 79/16-7674 and imposing the disciplinary order that was stayed thereby revoking Automotive
26 Repair Dealer Registration No. ARD 266219 issued to Amir Saifullah Shah;

1 2.e Revoking the probation that was granted by the Bureau of Automotive Repair in Casee
2 No. 79/16-7674 and imposing the disciplinary order that was stayed thereby revoking Smog
3 Check, Test Only, Station License No. TC 266219, issued to Amir Saifullah Shah;

4 3. Revoking or suspending Automotive Repair Dealer Registration No. ARD 266219,e
5 issued to Amir Saifullah Shah;

6 4. Revoking or suspending Smog Check, Test Only, Station License No. TC 266219,e
7 issued to Amir Saifullah Shah.

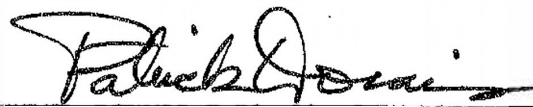
8 5.e Revoking or suspending Smog Check Inspector License No. EO 154238, issued toe
9 Amir Saifullah Shah.

10 6.e Revoking or suspending any additional Automotive Repair Dealer Registration, Smoge
11 Check Station license, Smog Check Inspector license, and/or Smog Check Repair Technician
12 license issued to Amir Saifullah Shah;

13 7.e Ordering Amir Saifullah Shah and Amir Saifullah Shah to pay the Director ofe
14 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant
15 to Business and Professions Code section 125.3; and

16 8. Taking such other and further action as deemed necessary and proper.e
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20 DATED: May 29, 2019



21 PATRICK DORAIS
22 Chief
23 Bureau of Automotive Repair
24 Department of Consumer Affairs
25 State of California
26 *Complainant*

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