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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:

Case No. 79/15-9

**DONG HYUN KIM, OWNER,  
DOING BUSINESS AS MIKE TEST  
ONLY,  
801 S. Anaheim Blvd #A  
Anaheim, CA 92805**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**Automotive Dealer Registration No.  
ARD 265468  
Smog Check, Test Only, Station License No.  
TC 265468,**

and

**DONG HYUN KIM  
801 S. Anaheim Blvd #A  
Anaheim, CA 92805**

**Smog Check Inspector License No.  
EO 632359  
Smog Check Repair Technician License No.  
EI 632359,**

Respondents.

FINDINGS OF FACT

1. On or about July 21, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation

1 No. 79/15-9 against Dong Hyun Kim, individually and dba Mike Test Only (collectively  
2 Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

3 2. On or about June 10, 2011, the Bureau of Automotive Repair (Bureau) issued  
4 Automotive Repair Dealer Registration No. ARD 265468 to Respondent. The Automotive  
5 Repair Dealer Registration was in full force and effect at all times relevant to the charges brought  
6 in Accusation No. 79/15-9, expired on June 30, 2014, and has not been renewed. This lapse in  
7 licensure, however, pursuant to Business and Professions Code section 118(b) and/or agency-  
8 specific statute does not deprive the Director of the authority to institute or continue this  
9 disciplinary proceeding.

10 3. On or about June 17, 2011, the Bureau of Automotive Repair issued Smog Check-  
11 Test Only Station License No. TC 265468 to Respondent. The Smog Check-Test Only Station  
12 License was in full force and effect at all times relevant to the charges brought in Accusation No.  
13 79/15-9, expired on June 30, 2014, and has not been renewed.

14 4. On August 9, 2010, the Bureau issued Advanced Emission Specialist (EA)  
15 Technician License No. 632359 to Respondent Dong Hyun Kim (Respondent Kim). It was due to  
16 expire on December 31, 2012. It was cancelled on November 16, 2012. Under California Code  
17 of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, under  
18 Respondent Kim's election, as Smog Check Inspector License No. EO 632359 and Smog Check  
19 Repair Technician License No. EI 632359, effective November 16, 2012. The Smog Check  
20 Inspector License and Smog Check Repair Technician License (collectively technician licenses)  
21 were in full force and effect at all times relevant to the charges brought herein and will expire on  
22 December 31, 2014, unless renewed.

23 5. On or about July 23, 2014, Respondent was served by Certified and First Class Mail  
24 copies of the Accusation No. 79/15-9, Statement to Respondent, Notice of Defense, Request for  
25 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
26 Respondent's address of record which, pursuant to Business and Professions Code section 136  
27 and title 16, California Code of Regulations, section 3303.3, is required to be reported and  
28 maintained with the Bureau. Respondent's address of record was and is:

1 801 S. Anaheim Blvd. #A  
2 Anaheim, CA 92805.

3 6. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
5 124.

6 7. On or about August 7, 2014, the aforementioned documents were returned by the  
7 U.S. Postal Service marked "UNDELIVERABLE AS ADDRESSED [X] UNABLE TO  
8 FORWARD." The address on the documents was the same as the address on file with the  
9 Bureau. Respondent failed to maintain an updated address with the Bureau and the Bureau has  
10 made attempts to serve the Respondent at the address on file. Respondent has not made himself  
11 available for service and therefore, has not availed himself of his right to file a notice of defense  
12 and appear at hearing.

13 8. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
16 of the accusation not expressly admitted. Failure to file a notice of defense shall  
17 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
18 may nevertheless grant a hearing.

19 9. Respondent failed to file a Notice of Defense within 15 days after service upon him  
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
21 79/15-9.

22 10. California Government Code section 11520 states, in pertinent part:

23 (a) If the respondent either fails to file a notice of defense or to appear at the  
24 hearing, the agency may take action based upon the respondent's express admissions  
25 or upon other evidence and affidavits may be used as evidence without any notice to  
26 respondent.

27 11. Pursuant to Government Code section 11520, the Director, after having reviewed the  
28 proof of service dated July 23, 2014, and the return envelopes, finds Respondent is in default.  
The Director will take action without further hearing and, based on Accusation No. 79/15-9, proof  
of service and on the Affidavit of Bureau Representative Jose Venegas, finds that the allegations  
in Accusation are true.

///

DETERMINATION OF ISSUES

1  
2           1.     Based on the foregoing findings of fact, Respondent Dong Hyun Kim, individually  
3 and dba Mike Test Only, has subjected his Automotive Repair Dealer Registration No. ARD  
4 265468; Smog Check-Test Only Station License No. TC 265468; Advanced Emission Specialist  
5 (EA) Technician License No. 632359; Smog Check Inspector License No. EO 632359; and Smog  
6 Check Repair Technician License No. EI 632359, to discipline.

7           2.     The agency has jurisdiction to adjudicate this case by default.

8           3.     The Director of Consumer Affairs is authorized to revoke Respondent's Automotive  
9 Repair Dealer Registration, Smog Check-Test Only Station License, Advanced Emission  
10 Specialist (EA) Technician License, Smog Check Inspector License, and Smog Check Repair  
11 Technician License, based upon the following violations alleged in the Accusation which are  
12 supported by the evidence contained in the affidavit of Bureau Representative Jose Venegas in  
13 this case:

14           a.     Respondent's ARD registration is subject to disciplinary action pursuant to Code  
15 section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or in the  
16 exercise of reasonable care should have known to be untrue or misleading.

17           b.     Respondent's ARD registration is subject to disciplinary action pursuant to Code  
18 section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud.

19           c.     Respondent's ARD registration is subject to disciplinary action pursuant to Code  
20 section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that  
21 Respondent failed to comply with the following sections of the Code of Regulations:

22                 (i) Section 3340.30, subdivision (a): Respondent issued eight electronic certificates  
23 of compliance for vehicles even though those vehicles had not been inspected in accordance with  
24 H&S Code sections 44012 and 44035, and Code of Regulations section 3340.42.

25                 (ii) Section 3340.35, subdivision (c): Respondent issued eight electronic certificates  
26 of compliance for vehicles even though those vehicles had not been inspected in accordance with  
27 section 3340.42.

1 (iii) Section 3340.41, subdivision (c): Respondent entered into the EIS information  
2 and data for vehicles other than ones being.

3 (iv) Section 3340.42: Respondent issued electronic certificates of compliance for  
4 eight vehicles even though those vehicles had not been inspected in accordance with Bureau  
5 specifications.

6 (v) Section 3373: In issuing electronic certificates of compliance for eight vehicles  
7 based upon inaccurate information entered into the EIS, Respondent caused those certificates to  
8 be false or misleading, with the tendency or effect to mislead or deceive customers, prospective  
9 customers, or the public.

10 d. Respondent's station license is subject to disciplinary action pursuant to H&S Code  
11 section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections  
12 of that Code:

13 (i) Section 44012: Respondent failed to ensure that the emission control tests  
14 performed on eight vehicles were done in accordance with procedures prescribed by the  
15 department.

16 (ii) Section 44012, subdivision (f): Respondent failed to ensure that eight vehicles  
17 were tested and inspected in accordance with the procedures prescribed by the department.

18 (iii) Section 44015, subdivision (b): Respondent issued electronic certificates of  
19 compliance for eight vehicles without properly testing and inspecting the vehicles to determine if  
20 they were in compliance with section 44012 of that Code.

21 (iv) Section 44032: Respondent failed to perform tests of the emission control  
22 devices and systems on eight vehicles in accordance with H&S Code section 44012.

23 e. Respondent's station license is subject to disciplinary action pursuant to H&S Code  
24 section 44072.2, subdivision (c), in that Respondent failed to comply with the following sections  
25 of the Code of Regulations:

26 (i) Section 3340.30, subdivision (a): Respondent issued electronic certificates of  
27 compliance for eight vehicles even though those vehicles had not been inspected in accordance  
28 with H&S Code sections 44012 and 44035, and CCR section 3340.42.

1 (ii) Section 3340.35, subdivision (c): Respondent issued electronic certificates of  
2 compliance for eight vehicles even though those vehicles had not been inspected in accordance  
3 with section 3340.42.

4 (iii) Section 3340.41, subdivision (c): Respondent entered into the EIS information  
5 and data for vehicles other than the ones tested.

6 (iv) Section 3340.42: Respondent issued electronic certificates of compliance for  
7 eight vehicles even though those vehicles had not been inspected in accordance with Bureau  
8 specifications.

9 (v) Section 3373: In issuing electronic certificates of compliance for eight vehicles,  
10 based upon inaccurate information entered into the EIS, Respondent caused those certificates to  
11 be false or misleading, with the tendency or effect to mislead or deceive customers, prospective  
12 customers, or the public.

13 f. Respondent's station license is subject to disciplinary action pursuant to H&S Code  
14 section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful  
15 acts whereby another is injured.

16 g. Respondent's technician license(s) is/are subject to disciplinary action pursuant to  
17 H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
18 following sections of that Code:

19 (i) Section 44012: Respondent failed to perform emission control tests on eight  
20 vehicles in accordance with procedures prescribed by the department.

21 (ii) Section 44012, subdivision (f): Respondent failed to test and inspect eight  
22 vehicles in accordance with the procedures prescribed by the department.

23 (iii) Section 44015, subdivision (b): Respondent issued electronic certificates of  
24 compliance for eight vehicles without properly testing and inspecting the vehicles to determine if  
25 they were in compliance with section 44012 of that Code.

26 (iv) Section 44032: Respondent failed to perform tests of the emission control  
27 devices and systems on eight vehicles in accordance with H&S Code section 44012.

28

1 h. Respondent's technician license(s) is/are subject to disciplinary action pursuant to  
2 H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
3 following sections of the CCR:

4 (i) Section 3340.30, subdivision (a): Respondent issued electronic certificates of  
5 compliance for eight vehicles even though those vehicles had not been inspected in accordance  
6 with H&S Code sections 44012 and 44035, and CCR section 3340.42.

7 (ii) Section 3340.35, subdivision (c): Respondent issued electronic certificates of  
8 compliance for eight vehicles even though those vehicles had not been inspected in accordance  
9 with section 3340.42.

10 (iii) Section 3340.41, subdivision (c): Respondent entered into the EIS information  
11 and data for vehicles other than the ones tested.

12 (iv) Section 3340.42: Respondent issued electronic certificates of compliance for  
13 eight vehicles even though those vehicles had not been inspected in accordance with Bureau  
14 specifications.

15 (v) Section 3373: In issuing electronic certificates of compliance for eight vehicles,  
16 Respondent entered inaccurate information into the EIS causing those certificates to be false or  
17 misleading, with the tendency or effect to mislead or deceive customers, prospective customers,  
18 or the public.

19 i. Respondent's technician license(s) is/are subject to disciplinary action pursuant to  
20 H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent  
21 or deceitful acts whereby another is injured.

22 ORDER

23 IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 265468,  
24 heretofore issued to Respondent Dong Hyun Kim, dba Mike Test Only, is revoked.

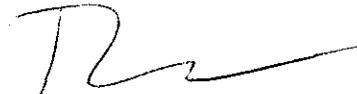
25 IT IS FURTHER ORDERED that Smog Check-Test Only Station License No. TC 265468,  
26 heretofore issued to Respondent Dong Hyun Kim, dba Mike Test Only, is revoked.

27  
28

1 IT IS FURTHER ORDERED that Smog Check Inspector License No. EO 632359 and  
2 Smog Check Repair Technician License No. EI 632359 heretofore issued to Respondent Dong  
3 Hyun Kim are revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
5 written motion requesting that the Decision be vacated and stating the grounds relied on within  
6 seven (7) days after service of the Decision on Respondent. The motion should be sent to the  
7 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho  
8 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing  
9 on a showing of good cause, as defined in the statute.

10 This Decision shall become effective on February 24, 2015.  
11 It is so ORDERED. TAMARA COLSON

12  
13  
14   
15 TAMARA COLSON  
16 Assistant General Counsel  
17 Department of Consumer Affairs

18 70923011.DOC  
19 DOJ Matter ID:SD2014707427

20 Attachment:  
21 Exhibit A: Accusation

22  
23  
24  
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28

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 ADRIAN R. CONTRERAS  
Deputy Attorney General  
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110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
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6 San Diego, CA 92186-5266  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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:

13 **DONG HYUN KIM, OWNER,**  
14 **DOING BUSINESS AS MIKE TEST**  
15 **ONLY,**  
16 **801 S. Anaheim Blvd #A**  
17 **Anaheim, CA 92805**

18 **Automotive Dealer Registration No.**  
19 **ARD 265468**  
20 **Smog Check, Test Only, Station License No.**  
21 **TC 265468,**

and

22 **DONG HYUN KIM**  
23 **801 S. Anaheim Blvd #A**  
24 **Anaheim, CA 92805**

25 **Smog Check Inspector License No.**  
26 **EO 632359**  
27 **Smog Check Repair Technician License No.**  
28 **EI 632359,**

Respondents.

Case No.

79/15-9

ACCUSATION

Smog Check

Complainant alleges:

**PARTIES**

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



1 continue a disciplinary proceeding against the licensee upon any ground provided by  
2 law or to enter an order suspending or revoking the license or otherwise taking  
disciplinary action against the licensee on any such ground.

3 9. Code section 9884.13 provides that "The expiration of a valid registration shall not  
4 deprive the director or chief of jurisdiction to proceed with any investigation or disciplinary  
5 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
6 temporarily or permanently."

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

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

#### 14 **STATUTORY PROVISIONS**

15 12. Code section 22, subdivision (a), states:

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

19 13. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes  
20 "registration" and "certificate."

21 14. Code section 9884.7 states, in pertinent part:

22 (a) The director, where the automotive repair dealer cannot show there was a  
23 bona fide error, may deny, suspend, revoke or place on probation the registration of  
24 an automotive repair dealer for any of the following acts or omissions related to the  
25 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.

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

.....

1 (4) Any other conduct that constitutes fraud.

....

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

4 ....

5 15. H&S Code section 44012 states:

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

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

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

....

17 (f) A visual or functional check is made of emission control devices  
18 specified by the department, including the catalytic converter in those instances in  
19 which the department determines it to be necessary to meet the findings of Section  
20 44001. The visual or functional check shall be performed in accordance with  
21 procedures prescribed by the department.

....

21 16. H&S Code section 44015 states in pertinent part:

....

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

....

26 17. H&S Code section 44032 states:

27 No person shall perform, for compensation, tests or repairs of emission  
28 control devices or systems of motor vehicles required by this chapter unless the  
person performing the test or repair is a qualified smog check technician and the test

1 or repair is performed at a licensed smog check station. Qualified technicians shall  
2 perform tests of emission control devices and systems in accordance with Section  
3 44012.

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

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

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

11 ....

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

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

16 ....

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

18 ....

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

23 (1) Clean piping, as defined by the department.

24 ....

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

27 20. H&S Code section 44072.8 states that when a license has been revoked or suspended  
28 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

21 21. California Code of Regulations, title 16 (CCR), section 3340.1 states, in pertinent  
22 part:

23 "Clean piping," for the purposes of Health and Safety Code section  
24 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of  
25 the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of  
26 compliance for the test vehicle . . .

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22. CCR section 3340.30 states in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

....

23. CCR section 3340.35 states in pertinent part:

....

(c) 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.

....

24. CCR section 3340.41 states in pertinent part:

....

(c) No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

....

25. CCR section 3340.42 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:

(a) A loaded-mode test, except as otherwise specified, shall be the test method used to inspect vehicles registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (b) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the VLT Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle is not included in this table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured emissions are less than or equal to the applicable emission standards specified in the applicable table.

(b) A two-speed idle mode test, unless a different test is otherwise specified in this article, shall be the test method used to inspect vehicles registered in all program areas of the state, except in those areas of the state where the enhanced

1 program has been implemented. The two-speed idle mode test shall measure  
2 hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and again  
3 at idle RPM, as contained in the bureau's specifications referenced in subsection (b)  
4 of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this  
5 inspection shall be measured and compared to the emission standards set forth in this  
6 section and as shown in TABLE III. A vehicle passes the two-speed idle mode test if  
7 all of its measured emissions are less than or equal to the applicable emissions  
8 standards specified in Table III.

9 ....

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

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

16 (A) air injection systems,

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

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

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

20 (E) exhaust gas recirculation (EGR) systems,

21 (F) fuel evaporative emission controls,

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

23 (H) ignition spark controls, and

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

26 ....

27 26. CCR section 3373 states:

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

### 29 COST RECOVERY

30 27. Code section 125.3 provides, in pertinent part, that a Board may request the  
31 administrative law judge to direct a licentiate found to have committed a violation or violations of  
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case. If a case settles, recovery of investigation and enforcement costs may be  
2 included in a stipulated settlement.

### 3 MARCH 21, 2014 SURVEILLANCE OPERATION

4 28. On March 21, 2014, at 0802 hours, a Bureau representative commenced surveillance  
5 operations at Respondent's smog station, Mike Test Only. The Bureau's video recording  
6 equipment recorded vehicles entering and exiting the station's testing bay from a confidential  
7 location for the entire period of time the station was open for business. The Bureau representative  
8 and his camera had a clear view of vehicles entering and exiting the testing bay, and could  
9 identify makes and models of vehicles present. At 1403 hours, Respondent Kim, whom the  
10 Bureau representative had identified from a photograph in the Bureau's database, entered the  
11 station. At 1406 hours, the station's test bay opened, and at 1408 hours, Respondent Kim was  
12 observed walking through the parking lot and looking into the windows of a van parked near his  
13 station's test bay. Between 1424 hour and 1625 hours that day, Respondent Kim was observed  
14 testing the vehicles listed in the table below, and inserting the exhaust emissions probe into the  
15 tailpipes of vehicles other than those he certified as compliant. Together, the surveillance  
16 operations and information obtained from the Bureau's Vehicle Information Database (VID)  
17 revealed that Respondent Kim performed eight smog inspections that resulted in the issuance of  
18 eight electronic certificates of compliance for the vehicles set forth in the table below, certifying  
19 that he had tested and inspected those vehicles and that the vehicles were in compliance with  
20 applicable laws and regulations. In fact, Respondent Kim performed the smog inspections on the  
21 vehicles set forth in the table below using the clean piping method.

22 Test No	Test Time	Vehicle Certified	Actual Vehicle Tested	Certificate	Details
23 1	1424 hours to 1434 hours	1997 Ford Explorer, California license 5RKX330	2003 Honda Accord, California license 7ELH660	PE823199C	The 1997 Ford Explorer was absent at the time of certification
24 2	1440 hours to 1445 hours	2006 Mazda 5, no license plate	2003 Honda Accord, California license 7ELH660	PE823200C	The 2006 Mazda 5 was absent at the time of certification

3	1449 hours to 1454 hours	1997 Honda Civic, no license plate	2003 Honda Accord, California license 7ELH660	YD659001C	The 1997 Honda Civic was absent at the time of certification
4	1513 hours to 1526 hours	1994 Chevrolet Cavalier, California license 3KET614	2003 Ford F150, California license 7U59910	YD659003C	The 1994 Chevrolet's tailpipe emissions were not tested. In its place was the 2003 Ford F150.
5	1532 hours to 1544 hours	1979 Chevrolet Camaro, California license 5NGW015	2003 Honda Accord, California license 7ELH660	YD659004C	The 1979 Chevrolet Camaro's tailpipe emissions were not tested. In its place was 2003 Honda Accord.
6	1548 hours to 1554 hours	1999 Chevrolet Tahoe, California license 5AKE442	2003 Honda Accord, California license number 7ELH660	YD659005C	The 1999 Chevrolet Tahoe was absent at the time of certification
7	1449 hours to 1454 hours	1988 Dodge B250, California license 3N33510	2003 Honda Accord, California license number 7ELH660	YD659006C	The 1988 Dodge B250 Van was absent at the time of certification.
8	1609 hours to 1625 hours	1993 Chevrolet Corvette, no license plate	2003 Honda Accord, California license number 7ELH660	YD659007C	The 1993 Chevrolet Corvette was absent at the time of certification.

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements – 8 Counts)**

29. Respondent's ARD registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's station certified that the vehicles identified in the table above, had passed inspection and were in compliance with applicable laws and regulations. In fact, the inspections of those vehicles were preformed using clean-piping methods using different vehicles in order to issue eight certificates of compliance for the vehicles, and the vehicles certified to have been tested and inspected were not tested or inspected as required by H&S Code section 44012.



1 caused those certificates to be false or misleading, with the tendency or effect to mislead or  
2 deceive customers, prospective customers, or the public.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program – 8 Counts)**

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

8 a. **Section 44012**: Respondent failed to ensure that the emission control tests performed  
9 on the eight vehicles identified in the table above, were done in accordance with procedures  
10 prescribed by the department.

11 b. **Section 44012, subdivision (f)**: Respondent failed to ensure that the eight vehicles  
12 identified in the table above, were tested and inspected in accordance with the procedures  
13 prescribed by the department.

14 c. **Section 44015, subdivision (b)**: Respondent issued electronic certificates of  
15 compliance for the eight vehicles identified in the table above, without properly testing and  
16 inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

17 d. **Section 44032**: Respondent failed to perform tests of the emission control devices  
18 and systems on the eight vehicles identified in the table above, in accordance with H&S Code  
19 section 44012.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant to the**

22 **Motor Vehicle Inspection Program – 8 Counts)**

23 33. Respondent's station license is subject to disciplinary action pursuant to H&S Code  
24 section 44072.2, subdivision (c), in that Respondent failed to comply with the following sections  
25 of the CCR:

26 a. **Section 3340.30, subdivision (a)**: Respondent issued electronic certificates of  
27 compliance for the eight vehicles identified in the table above, even though those vehicles had not  
28

1 been inspected in accordance with H&S Code sections 44012 and 44035, and CCR section  
2 3340.42.

3 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
4 compliance for the eight vehicles identified in the table above, even though those vehicles had not  
5 been inspected in accordance with section 3340.42.

6 c. **Section 3340.41, subdivision (e):** Respondent entered into the EIS information and data  
7 for vehicles other than the eight being tested, as detailed in the table above.

8 d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the eight  
9 vehicles identified in the table above, even though those vehicles had not been inspected in  
10 accordance with Bureau specifications.

11 e. **Section 3373:** In issuing electronic certificates of compliance for the eight vehicles  
12 identified in the table above, based upon inaccurate information entered into the EIS, Respondent  
13 caused those certificates to be false or misleading, with the tendency or effect to mislead or  
14 deceive customers, prospective customers, or the public.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit – 8 Counts)**

17 34. Respondent's station license is subject to disciplinary action pursuant to H&S Code  
18 section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful  
19 acts whereby another is injured by issuing electronic smog certificates of compliance for the eight  
20 vehicles identified in the table above, without ensuring that bona fide inspections were performed  
21 of the emission control devices and systems on the vehicles, thereby depriving the People of the  
22 State of California of the protection afforded by the Motor Vehicle Inspection Program.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Violations of the Motor Vehicle Inspection Program – 8 Counts)**

25 35. Respondent Kim's technician license(s) is/are subject to disciplinary action pursuant  
26 to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
27 following sections of that Code:  
28

1 a. **Section 44012**: Respondent failed to perform emission control tests on the eight  
2 vehicles identified in the table above, in accordance with procedures prescribed by the  
3 department.

4 b. **Section 44012, subdivision (f)**: Respondent failed to test and inspect the eight  
5 vehicles identified in the table above, in accordance with the procedures prescribed by the  
6 department.

7 c. **Section 44015, subdivision (b)**: Respondent issued electronic certificates of  
8 compliance for the eight vehicles identified in the table above, without properly testing and  
9 inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

10 d. **Section 44032**: Respondent failed to perform tests of the emission control devices  
11 and systems on the eight vehicles identified in the table above, in accordance with H&S Code  
12 section 44012.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations Pursuant to the**  
15 **Motor Vehicle Inspection Program – 8 Counts)**

16 36. Respondent's technician license(s) is/are subject to disciplinary action pursuant to  
17 H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
18 following sections of the CCR:

19 a. **Section 3340.30, subdivision (a)**: Respondent issued electronic certificates of  
20 compliance for the eight vehicles identified in the table above, even though those vehicles had not  
21 been inspected in accordance with H&S Code sections 44012 and 44035, and CCR section  
22 3340.42.

23 b. **Section 3340.35, subdivision (c)**: Respondent issued electronic certificates of  
24 compliance for the eight vehicles identified in the table above, even though those vehicles had not  
25 been inspected in accordance with section 3340.42.

26 c. **Section 3340.41, subdivision (c)**: Respondent entered into the EIS information and data  
27 for vehicles other than the eight being tested, as detailed in the table 1 above.

28

1 d. **Section 3340.42:** Respondent issued electronic certificates of compliance for the eight  
2 vehicles identified in the table above, even though those vehicles had not been inspected in  
3 accordance with Bureau specifications.

4 e. **Section 3373:** In issuing electronic certificates of compliance for the eight vehicles  
5 identified in the table 1 above, Respondent entered inaccurate information into the EIS causing  
6 those certificates to be false or misleading, with the tendency or effect to mislead or deceive  
7 customers, prospective customers, or the public.

### 8 **NINTH CAUSE FOR DISCIPLINE**

#### 9 **(Dishonesty, Fraud or Deceit – 8 Counts)**

10 38. Respondent's technician license(s) is/are subject to disciplinary action pursuant to  
11 H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent  
12 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance  
13 for the vehicles identified in the table above, without performing bona fide inspections of the  
14 emission control devices and systems on the vehicles, thereby depriving the People of the State of  
15 California of the protection afforded by the Motor Vehicle Inspection Program.

### 16 **DISCIPLINE CONSIDERATIONS**

17 39. To determine the degree of discipline, if any, to be imposed on Respondent, his  
18 station, and smog technician licenses have been previously disciplined as follows:

19 a. Citation C2014-0098 was issued on August 9, 2013, against Respondent's Station  
20 License for \$1,000, was appealed informally on October 3, 2013, and was affirmed on November  
21 26, 2013. Respondent was cited for violating H&S Code §44012(f) (failure to perform a  
22 visual/functional check of emission control devices according to procedures prescribed by the  
23 department). On October 4, 2013, Respondent complied with the citation. That Citation is now  
24 final and is incorporated by reference as if fully set forth.

25 b. Citation C2014-0311 was issued on November 14, 2013, against Respondent's Station  
26 License for \$2,000, and satisfied by payment received on January 6, 2014. Respondent was again  
27 cited for the same violation of the H&S Code detailed above. That Citation is now final and is  
28 incorporated by reference as if fully set forth.

1 c. Citation M2014-0099 and Order of Abatement was issued on August 9, 2013, against  
2 Respondent for an 8-hour training course, which was completed on September 13, 2013. The  
3 citation was appealed informally on October 3, 2013, and was affirmed on November 26, 2013.  
4 Respondent was cited for violating H&S Code §44032 (qualified technicians shall perform tests  
5 of emissions control systems and devices in accordance with H&S Code §44012. That Citation is  
6 now final and is incorporated by reference as if fully set forth.

7 d. Citation M2014-0312 and Order of Abatement was issued on November 14, 2013,  
8 against Respondent for a 28-hour training course, which was completed on December 14, 2013,  
9 and a \$500 fine, which was satisfied by payment received on January 6, 2014. Respondent was  
10 again cited for the same violation of the H&S Code detailed above. That Citation is now final  
11 and is incorporated by reference as if fully set forth.

#### 12 **OTHER MATTERS**

13 40. Under Code section 9884.7, subdivision (c), the Director may refuse to validate, or  
14 may invalidate temporarily or permanently, the registrations for all places of business operated in  
15 this state by Dong Hyun Kim, Owner, doing business as Mike Test Only, upon a finding that he  
16 has, or is, engaged in a course of repeated and willful violations of the laws and regulations  
17 pertaining to an automotive repair dealer.

18 41. Under Health & Safety Code section 44072.8, if Smog Check Test Only Station  
19 License Number TC 265468, issued to Dong Hyun Kim, Owner, doing business as Mike Test  
20 Only, 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 42. Under Health and Safety Code section 44072.8, if Respondent Kim's technician  
23 license(s) is/are revoked or suspended, any additional license issued under this chapter in the  
24 name of Respondent Kim may be likewise revoked or suspended by the Director.

#### 25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Director of Consumer Affairs issue a decision:  
28

- 1           1.    Revoking or suspending Automotive Repair Dealer Registration Number ARD
- 2   265468, issued to Dong Hyun Kim, Owner, doing business as Mike Test Only;
- 3           2.    Revoking or suspending any other automotive repair dealer registration issued in the
- 4   name Dong Hyun Kim, Owner, doing business as Mike Test Only;
- 5           3.    Revoking or suspending Smog Check, Test Only, Station License Number TC
- 6   265468, issued to Dong Hyun Kim, Owner, doing business as Mike Test Only;
- 7           4.    Revoking or suspending any additional license issued under Chapter 5 of the Health
- 8   and Safety Code in the name of Dong Hyun Kim, Owner, doing business as Mike Test Only;
- 9           5.    Revoking or suspending Smog Check Inspector (EO) License Number 632359, issued
- 10   to Dong Hyun Kim;
- 11          6.    Revoking or suspending Smog Check Repair Technician (EI) License Number EI
- 12   632359, issued to Dong Hyun Kim;
- 13          7.    Revoking or suspending any additional license issued under Chapter 5 of the Health
- 14   and Safety Code in the name of Dong Hyun Kim;
- 15          8.    Ordering Dong Hyun Kim to pay the Bureau of Automotive Repair the reasonable
- 16   costs of the investigation and enforcement of this case, pursuant to Business and Professions
- 17   Code section 125.3; and
- 18          9.    Taking such other and further action as deemed necessary and proper.

19   DATED: 7-21-14                      *Patrick Dorais by Dong Balatti*  
20    PATRICK DORAIS  
21    Chief  
22    Bureau of Automotive Repair  
23    Department of Consumer Affairs  
24    State of California  
25    *DONG BALATTI*  
26    *ASSIST. CHIEF*  
27    *Complainant*

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