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7

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

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

Case No. 79/18-19457

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

**FIRST AMENDED
ACCUSATION AND
PETITION TO REVOKE
PROBATION**

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

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

21 Respondent.

22
23o Complainant alleges:

24o **PARTIES**

25 1.o Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke
26 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair,
27 Department of Consumer Affairs.
28

1 automotive repair dealer, which are done by the automotive repair dealer or any automotive
2 technician, employee, partner, officer, or member of the automotive repair dealer.

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

6 ...

7 (4) Any other conduct which constitutes fraud.

8 ...

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

11 ...

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

16
17 8.o Section 9884.8 of the Code states:

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

o28o 9.o Section 9884.9 of the Code states:

1 “(a) The automotive repair dealer shall give to the customer a written estimated price for
2 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
3 before authorization to proceed is obtained from the customer. No charge shall be made for work
4 done or parts supplied in excess of the estimated price without the oral or written consent of the
5 customer that shall be obtained at some time after it is determined that the estimated price is
6 insufficient and before the work not estimated is done or the parts not estimated are supplied.
7 Written consent or authorization for an increase in the original estimated price may be provided
8 by electronic mail or facsimile transmission from the customer. The bureau may specify in
9 regulation the procedures to be followed by an automotive repair dealer if an authorization or
10 consent for an increase in the original estimated price is provided by electronic mail or facsimile
11 transmission. If that consent is oral, the dealer shall make a notation on the work order of the date,
12 time, name of person authorizing the additional repairs and telephone number called, if any,
13 together with a specification of the additional parts and labor and the total additional cost, and
14e shall do either of the following:

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

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

20 “I acknowledge notice and oral approval of an increase in the original estimated price,

21 _____

22 (signature or initials)”

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

25 ...”

26 10. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valide
27 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

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1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

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

6 12.e Section 44012 of the Health and Safety Code states:e

7 “The test at the smog check stations shall be performed in accordance with procedures
8 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
9 mode dynamometer testing in enhance~~d~~ areas, and two-speed testing in all other program areas,
10 and shall ensure all of the following:

11 ...

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

16 ...”

17 13.e Section 44015 of the Health and Safety Code states:e

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

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

21 ...

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

24 ...”

25 14.e Section 44032 of the Health and Safety Code states:e

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

1 station. Qualified technicians shall perform tests of emission control devices and systems in
2 accordance with Section 44012.”

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

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

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

10 ...

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

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

13 ...

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

16 16.e Section 44072.6 of the Health and Safety Code provides, in pertinent part, that thee
17 expiration or suspension of a license by operation of law, or by order or decision of the Director
18 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
19 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
20 proceedings against the licensee, or to render a decision suspending or revoking the license.

21 17.e Section 44072.8 of the Health and Safety Code states:e

e22e “When a license has been revoked or suspended following a hearing under this article, any
23e additional license issued under this chapter in the name of the licensee may be likewise revoked
24e or suspended by the director.”

25 **REGULATORY PROVISIONS**

26 18.e California Code of Regulations, title 16, section 3340.24, subdivision (c), states:e
27
28

1 “(c) The bureau may suspend or revoke the license of or pursue other legal action against a
2 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
3 certificate of noncompliance.”

4 19.e California Code of Regulations, title 16, section 3340.35, subdivision (c), states:e

5 “(c) A licensed station shall issue a certificate of compliance or noncompliance to the
6 owner or operator of any vehicle that has been inspected in accordance with the procedures
7 specified in section 3340.42 of this article and has all the required emission control equipment
8 and devices installed and functioning correctly. The following conditions shall apply:

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

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

12 20.e California Code of Regulations, title 16, section 3340.42, states:e

13 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
14 section 3340.45.

15 ...

16 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
17 receive the following:

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

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

23 ...”

24 21.e California Code of Regulations, title 16, section 3340.45, states:e

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

27 ...

28

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

3 22.e California Code of Regulations, title 16, section 3353, states:e

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

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

8 . . .”

9 23.e California Code of Regulations, title 16, section 3371, states:e

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

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

16 “(b) Telephone Number. If a telephone number appears in an advertisement or on an
17 advertising sign, this number shall be the same number as that listed for the dealer’s firm name
18 and address in the telephone directory, or in the telephone company records if such number is
19 assigned to the dealer subsequent to the publication of such telephone directory.”

20 24.e California Code of Regulations, title 16, section 3373, states:e

21 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
22 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
e23e withhold therefrom or insert therein any statement or information which will cause any such
24e document to be false or misleading, or where the tendency or effect thereby would be to mislead
25e or deceive customers, prospective customers, or the public.”

26 **COSTS**

27 25.e Section 125.3 of the Code provides, in pertinent part, that the Board may request three
28 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **FACTUAL BACKGROUND**

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

12 27.e On or about November 15, 2018, an undercover operation was performed at
13 Respondent's smog check station to confirm compliance with the Smog Check Program. An
14 operator drove the Dodge to Golden Star Smog and requested a smog inspection from
15 Respondent.

16 28.e Respondent pulled the Dodge into a service bay and performed a smog inspection.
17 The operator was not given a written estimate prior to the smog inspection. A few minutes later
18 Respondent came into the waiting area and told the operator that the vehicle was ready. The
19 operator was given two copies of an invoice and a Vehicle Inspection Report (VIR). The vehicle
20 passed the smog inspection.

21 29.e Smog Certificate of Compliance # [REDACTED] was issued for the Dodge by
22 Respondent. Respondent entered "Pass" into the OIS for the Visual Inspection category
23 "Crankcase Emission Controls," when in fact Respondent should have entered "Tampered"
24 because the Dodge had been tampered with. The VIR stated "Pass" for the Visual Inspection
25 category "Crankcase Emission Controls." Respondent signed the VIR under penalty of perjury.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (False or misleading Statements)

3 30.o Respondent has subjected his Automotive Repair Dealer Registration to disciplinary
4 action under section 9884.7, subdivision(a)(1), in that Respondent made false or misleading
5 statements that he knew or should have known were false or misleading as follows:

6 a.o Respondent transmitted information to the Vehicle Information Database stating the
7 Dodge had properly installed Crankcase Emission Controls.

8 b.o Respondent created a VIR stating the Dodge had properly installed Crankcase
9 Emission Controls.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Violation of Laws and Regulations)

12 31.o Respondent has subjected his Automotive Repair Dealer Registration to disciplinary
13 action under section 9884.7, subdivision (a)(6), in that Respondent violated the following laws
14 and regulations:

15 a.o Respondent violated Code section 9884.9(a) by failing to provide the operator with an
16 written estimate prior to performing the smog inspection.

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

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

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

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

28

1 f.o Respondent violated California Code of Regulations, Title 16, section 3353, in thato
2 Respondent failed to provide the operator with a written estimate.

3 g.o Respondent violated California Code of Regulations, Title 16, section 3371, in thato
4 Respondent made untrue or misleading statements as described in paragraph 25, above.

5 h.o Respondent violated California Code of Regulations, Title 16, section 3373, in thato
6 Respondent made untrue or misleading statements on a Vehicle Inspection Report. The Vehicle
7 Inspection Report stated that the vehicle passed the Crankcase Emission Controls visual
8 inspection.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Dishonest or Deceit)

11 32.o Respondent has subjected his Smog Check Station License to disciplinary actiono
12 under Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed
13 acts involving dishonesty or deceit whereby another was injured. The circumstances are
14 described in paragraphs 26-29, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 (Violation of Laws and Regulations)

17 33.o Respondent has subjected his Smog Check Station License to disciplinary actiono
18 under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or (g), in that
19 Respondent violated the following laws and regulations:

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

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

25 c. Respondent violated California Code of Regulations, Title 16, section 3340.24,o
26 subdivision (c), in that Respondent falsely issued a certificate of compliance to the Dodge.
27
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1 d.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 e. Respondent violated California Code of Regulations, Title 16, section 3340.42,e
5 subdivision (b) in that Respondent failed to perform a proper visual inspection of the Dodge.

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

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

11 34.e The Petition to Revoke Probation is brought before the Director for the Bureau of
12 Automotive Repair under Probation Terms and Conditions “A” and “F” of the Decision and
13 Order In the Matter of The Accusation Against Amir Saifullah Shah dba Golden Star Smog, Case
14 No. 79/16-7674. Term and condition “A” states:

15 “A. Obey All Laws

16 “During the period of probation, respondent Shah shall comply with all federal and state
17 statutes, regulations, and rules governing ail Bureau registrations and licenses he holds.”

18 35.e Term and condition “F” states:e

19 “F. Violation of Probation

20 “If respondent Shah violates or fails to comply with the terms and conditions of probation
21 in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay
22 order and carry out the disciplinary order provided in this decision. Once respondent Shah
23 receives notice of the Bureau’s intent to set aside the stay, the Director shall maintain jurisdiction,
24 and the period of probation shall be extended until final resolution of the matter.”

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CAUSE TO REVOKE PROBATION

(Violation of Laws and Regulations)

36.e Respondent's probation is subject to revocation pursuant to probation term "F" because Respondent failed to comply with probation term "A," referenced above. Respondent failed obey all laws as described in paragraphs 26-33, above.

OTHER MATTERS

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

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

PRAYER

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

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

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

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

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

1 5.e Revoking or suspending any additional Automotive Repair Dealer Registration, ore
2 Smog Check Station license, issued to Amir Saifullah Shah;

3 6. Ordering Amir Saifullah Shah and Amir Saifullah Shah to pay the Director of e
4 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant
5 to Business and Professions Code section 125.3; and

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

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10 DATED: June 12, 2019 

11 PATRICK DORAIS
12 Chief
13 Bureau of Automotive Repair
14 Department of Consumer Affairs
15 State of California
16 *Complainant*

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