

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *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 and Petition to
Revoke Probation Against:

Case No. *79/16-3256*

13 **GO GO SMOG & AUTO GLASS**
14 **GUSTAVO GONZALEZ, OWNER**
260 Garden Highway, Suite #E
Yuba City, CA 95991
15 **Automotive Repair Dealer Registration**
16 **No. ARD 261602**
Smog Check Station License No. RC 261602

17 Respondent.

18 Patrick Dorais ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation and Petition to Revoke Probation solely in his
21 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of
22 Consumer Affairs.

23 **Automotive Repair Dealer Registration**

24 2. On or about April 15, 2010, the Bureau issued Automotive Repair Dealer Registration
25 Number ARD 261602 ("registration") to Gustavo Gonzalez ("Respondent"), Owner, doing
26 business as Go Go Smog & Auto Glass. The registration will expire on March 31, 2017, unless
27 renewed.
28

1 operates more than one place of business in this state, the director pursuant to
2 subdivision (a) shall only suspend, revoke, or place on probation the registration of
3 the specific place of business which has violated any of the provisions of this chapter.
4 This violation, or action by the director, shall not affect in any manner the right of the
5 automotive repair dealer to operate his or her other places of business.

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

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

15 8. Code section 118, subdivision (b), states:

16 The suspension, expiration, or forfeiture by operation of law of a license issued
17 by a board in the department, or its suspension, forfeiture, or cancellation by order of
18 the board or by order of a court of law, or its surrender without the written consent of
19 the board, shall not, during any period in which it may be renewed, restored, reissued,
20 or reinstated, deprive the board of its authority to institute or continue a disciplinary
21 proceeding against the licensee upon any ground provided by law or to enter an order
22 suspending or revoking the license or otherwise taking disciplinary action against the
23 licensee on any such ground.

24 9. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
25 "commission," "committee," "department," "division," "examining committee," "program," and
26 "agency." "License" includes certificate, registration or other means to engage in a business or
27 profession regulated by the Code.

28 10. Health and Safety Code section 44002 provides, in pertinent part, that the Director
has all the powers and authority granted under the Automotive Repair Act for enforcing the
Motor Vehicle Inspection Program.

11. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

5 12. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration
6 or suspension of a license by operation of law, or by order or decision of the Director
7 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
8 the Director of jurisdiction to proceed with disciplinary action.

9 13. Health and Safety Code section 44072.8 states:

10 When a license has been revoked or suspended following a hearing under this
11 article, any additional license issued under this chapter in the name of the licensee
12 may be likewise revoked or suspended by the director.

13 COST RECOVERY

14 14. Code section 125.3 provides, in pertinent part, that a Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 UNDERCOVER OPERATION

19 15. On or about February 24, 2016, a Bureau undercover operator (the "operator") took
20 the Bureau's 2002 Honda to Go Go Smog & Auto Glass, Respondent's facility, and requested a
21 smog inspection. Respondent allegedly performed the smog inspection. The operator paid
22 \$45.00 and received a copy of Invoice [REDACTED] and a Vehicle Inspection Report ("VIR").

23 16. The Bureau obtained information from the Vehicle Information Database ("VID")
24 showing that Smog Technician J. M. had performed a smog inspection on the 2002 Honda on
25 February 24, 2016, resulting in the issuance of electronic smog Certificate of Compliance [REDACTED]
26 [REDACTED].

27 17. On or about March 14, 2016, the Bureau inspected the 2002 Honda and found that the
28 vehicle could not have passed the smog test because the Catalytic Converter had been removed
and an Add-on Adaptor was installed on the vehicle.

///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Untrue or Misleading Statements)

3 18. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
4 subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the
5 exercise of reasonable care should have known to be untrue or misleading. Specifically, on or
6 about February 24, 2016, Respondent certified under penalty of perjury that the Bureau's 2002
7 Honda had passed a smog inspection and was in compliance with applicable laws and regulations.
8 In fact, the Catalytic Converter had been removed and an Add-On Adaptor was installed, which
9 precluded the vehicle from passing the inspection required by Health & Safety Code
10 section 44012.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Fraud)

13 19. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
14 subdivision (a)(4), in that on or about February 24, 2016, Respondent committed an act that
15 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 2002
16 Honda without ensuring that a bona fide inspection was performed of the emission control
17 devices and systems on the vehicle, thereby depriving the people of the State of California of the
18 protection afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Motor Vehicle Inspection Program - Code Violations)

21 20. Respondent's smog check station license is subject to disciplinary action pursuant to
22 Health & Safety Code section 44072.2, subdivision (a), in that on or about February 24, 2016,
23 Respondent failed to comply with provisions of that Code, as follows:

24 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
25 performed on the Bureau's 2002 Honda in accordance with procedures prescribed by the
26 department.

1 with the terms and conditions of probation, the Department may, after giving notice and
2 opportunity to be heard, suspend, or revoke the license.

3 25. Grounds exist to revoke Respondent's probation and re-impose the order of
4 revocation of his Automotive Repair Dealer Registration and Smog Check Station License.

5 **CAUSE TO REVOKE PROBATION**

6 **(Failure to Obey All Laws)**

7 26. Condition 2 of Respondent Gonzalez's probation states that Respondent, "shall
8 comply with all statutes, regulations and rules governing automotive inspections, estimates and
9 repairs."

10 27. Respondent Gonzalez's probation is subject to revocation in that he failed to comply
11 with all statutes, regulations, and rules governing automotive inspections, as set forth above in
12 paragraphs 15 through 22, incorporated herein by reference.

13 **OTHER MATTERS**

14 28. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily
15 or permanently or refuse to validate, the registrations for all places of business operated in this
16 state by Respondent Gustavo Gonzalez, Owner, doing business as Go Go Smog & Auto Glass,
17 upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws
18 and regulations pertaining to an automotive repair dealer.

19 29. Under Health and Safety Code section 44072.8, if Smog Check Station License
20 Number RC 261602, issued to Respondent Gustavo Gonzalez, Owner, doing business as Go Go
21 Smog & Auto Glass, is revoked or suspended, any additional license issued under this chapter in
22 the name of said licensee may be likewise revoked or suspended by the director.

23 **PRAYER**

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

26 1. Revoking probation and re-imposing the order of revocation of Automotive Repair
27 Dealer Registration Number ARD 261602, issued to Gustavo Gonzalez, Owner, doing business as
28 Go Go Smog & Auto Glass;

1 2. Revoking or suspending any other automotive repair dealer registration issued to
2 Gustavo Gonzalez;

3 3. Revoking probation and re-imposing the order of revocation of Smog Check Station
4 License Number RC 261602, issued to Gustavo Gonzalez, doing business as Go Go Smog &
5 Auto Glass;

6 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
7 and Safety Code in the name of Gustavo Gonzalez;

8 5. Ordering Gustavo Gonzalez to pay the Bureau of Automotive Repair the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3; and,

11 6. Taking such other and further action as deemed necessary and proper.
12

13 DATED: October 7, 2016



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

14
15
16
17 SA2016101932
18 12455350.doc
19
20
21
22
23
24
25
26
27
28