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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:

Case No. 79/15-1

13 **HAMILTON UNION SERVICE and**  
14 **HOSSAIN ERFAN KHAZIRI, Owner**  
337 E. Hamilton Avenue  
Campbell, CA 95008-0206

**A C C U S A T I O N**

15 **Automotive Repair Dealer Registration No.**  
16 **ARD 148777**  
**Smog Check Station License No. RC 148777**

17 **JA MARE DEJHON PERRY**  
18 **P.O. Box 111146**  
19 **Campbell, CA 95011-1146**

20 **Smog Check Inspector License No. EO**  
21 **631117**  
22 **Smog Check Repair Technician License EI**  
23 **631117,**  
**(formerly Advanced Emission Specialist**  
**Technician License No. EA 631117)**

24 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 **Respondent Hamilton**

6 2. On or about August 16, 1989, the Bureau of Automotive Repair issued Automotive  
7 Repair Dealer Registration Number ARD 148777 to Hamilton Union Service and Hossain Erfan  
8 Khaziri, Owner (Respondent Hamilton). The Automotive Repair Dealer Registration was in full  
9 force and effect at all times relevant to the charges brought in this Accusation and will expire on  
10 August 31, 2014, unless renewed.

11 3. On or about September 12, 1989, the Bureau of Automotive Repair issued Smog  
12 Check Station License Number RC 148777 to Respondent Hamilton. The Smog Check Station  
13 License was in full force and effect at all times relevant to the charges brought in this Accusation  
14 and will expire on August 31, 2014, unless renewed.

15 **Respondent Perry**

16 4. On or about June 22, 2009, the Director issued Advanced Emission Specialist  
17 Technician License Number EA 631117 to Ja Mare Dejhon Perry (Respondent Perry).  
18 Respondent Perry's advanced emission specialist technician license was due to expire on August  
19 31, 2013. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e),  
20 said license was renewed, pursuant to Respondent Perry's election, as Smog Check Inspector  
21 License No. EO 631117, and Smog Check Repair Technician License No. EI 631117, effective  
22 August 6, 2013.<sup>1</sup> Respondent's smog check inspector license and smog check repair technician  
23 license will expire on August 31, 2015, unless renewed.

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

1 **JURISDICTION**

2 5. The Director of Consumer Affairs (Director) for the Bureau of Automotive Repair,  
3 brings this Accusation under the authority of the following laws. All sections references are to the  
4 Business and Professions Code (Code) unless otherwise indicated.

5 6. Code section 118, subdivision (b), provides that the suspension, expiration, surrender,  
6 or cancellation of a license shall not deprive the Director of jurisdiction to proceed with a  
7 disciplinary action during the period within which the license may be renewed, restored, reissued,  
8 or reinstated.

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

13 8. Health and Safety Code Section 44002 provides, in part, that the Director has all the  
14 powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle  
15 Inspection Program.

16 9. Health and Safety Code Section 44072.6 provides, in part, that the expiration or  
17 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
18 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
19 of jurisdiction to proceed with disciplinary action.

20 **STATUTORY PROVISIONS**

21 10. Code Section 477 provides, in part, that "Board" includes "bureau," "commission,"  
22 "committee," "department," "division," "examining committee," "program," and "agency."  
23 "License" includes certificate, registration or other means to engage in a business or profession  
24 regulated by the Code.

25 11. Code Section 9884.7 states:

26 (a) The director, where the automotive repair dealer cannot show there was a  
27 bona fide error, may deny, suspend, revoke, or place on probation the registration of  
28 an automotive repair dealer for any of the following acts or omissions related to the  
conduct of the business of the automotive repair dealer, which are done by the

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

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

6 ...

7 (4) Any other conduct that constitutes fraud.

8 ...

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

11 ...

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

17 12. Health and Safety Code Section 44012 states, in part:

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

22 ...

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

28 13. Health and Safety Code Section 44015, subdivision (b), states that “[i]f a vehicle  
meets the requirements of Section 44012, a smog check station licensed to issue certificates shall  
issue a certificate of compliance or a certificate of noncompliance.”

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14. Health and Safety Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission 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 or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

15. Health and Safety Code Section 44072.2 states, in part:

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

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

...

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

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

...

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

16. Health and Safety Code section 44072.8 states:

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

17. Health and Safety Code section 44072.10, subdivision (c), states, in part:

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

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

2 ...

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

5 **REGULATORY PROVISIONS**

6 18. California Code of Regulations, title 16, section 3340.1 states, in part:

7 "Clean piping," for the purposes of Health and Safety Code section  
8 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of the  
9 actual test vehicle's exhaust in order to cause the EIS to issue a certificate of  
10 compliance for the test vehicle.

11 19. California Code of Regulations, title 16, section 3340.30 states, in part:

12 A smog check technician shall comply with the following requirements at all  
13 times while licensed.

14 (a) A licensed technician shall inspect, test and repair vehicles in accordance  
15 with section 44012 of the Health and Safety Code, section 44035 of the Health and  
16 Safety Code, and section 3340.42 of this article.

17 20. California Code of Regulations, title 16, section 3340.35, subdivision (c), states, in  
18 part:

19 A licensed station shall issue a certificate of compliance or noncompliance to  
20 the owner or operator of any vehicle that has been inspected in accordance with the  
21 procedures specified in section 3340.42 of this article and has all the required  
22 emission control equipment and devices installed and functioning correctly.

23 21. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

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

28 22. California Code of Regulations, title 16, section 3340.42, states, in part:

Smog check stations and smog check technicians shall conduct tests and  
inspections in accordance with the bureau's BAR-97 Emissions Inspection System  
Specifications referenced in subsections (a) and (b) of Section 3340.17 . . . .

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1 23. California Code of Regulations, title 16, section 3371, states, in part:

2 No dealer shall publish, utter, or make or cause to be published, uttered, or  
3 made any false or misleading statement or advertisement which is known to be false  
4 or misleading, or which by the exercise of reasonable care should be known to be  
false or misleading.

5 **COST RECOVERY**

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

9 **CLEAN PIPING ACTIVITIES**

10 25. On or about August 7, 2013, a 2005 Nissan 350Z, California license number  
11 6MTV972, failed a smog inspection at a smog facility in Manteca, California. On or about  
12 August 8, 2013, Respondent Perry, as an employee of Respondent Hamilton, entered data in to a  
13 BAR-97 analyzer/Emissions Inspection System (EIS), under oath, attesting that he conducted a  
14 smog inspection on the 2005 Nissan. Respondent Hamilton issued a certificate of compliance for  
15 the 2005 Nissan. The August 8, 2013, inspection indicated that the odometer reading of the 2005  
16 Nissan had two more miles added to it since the smog inspection the prior day in a city  
17 approximately 75 miles away. On or about August 10, 2013, EV<sup>2</sup> purchased the 2005 Nissan  
18 from a private party. On or about August 11, 2013, EV discovered that the 2005 Nissan's  
19 catalytic converters were defective, so it should not have passed a proper smog inspection. EV  
20 filed a complaint with the Bureau regarding the improper smog inspection by Respondent  
21 Hamilton's facility.

22 26. On or about September 12, 2013, Respondent Perry admitted to Bureau investigators  
23 that during smog inspections at Respondent Hamilton's facility, he used clean piping methods and  
24 issued fraudulent certificates of compliance for six cars, as follows:

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28 <sup>2</sup> To maintain privacy, this Accusation identifies the complaining witness by letters.

Date/Time of Inspection	Vehicle Identification	Certificate Number
August 8, 2013, between 1931 and 1942 hours	2005 Nissan 350Z, CA license no. 6MTV972	OY454377
August 8, 2013, between 1948 and 1956 hours	1993 Mazda RX7, CA license no. 6GCE270	OY454378
August 11, 2013, between 1847 and 1854 hours	1997 BMW 3-series, WA license no. AHF6108	OY454390
August 11, 2013, between 1933 and 2023 hours	1984 Chevrolet G30 van, CA license no. 2LYT076	OY454391
August 12, 2013, between 1859 and 1914 hours	1993 Honda Civic, CA license no. 6SRH009	OY454398
August 23, 2013, between 1900 and 1912 hours	1990 Mazda RX7, CA license no. 6LQF701	OY727802

27. Respondent Perry admitted that as to the six cars listed, above, he received text messages from people requesting an illegal smog certificate. Each time, he manually entered the car's information into the EIS but used a different car to complete and pass the smog inspection. The six cars listed on the certificates of compliance were not present at the shop during the inspection. Respondent Perry provided each Vehicle Inspection Report in exchange for \$75.00 to \$100.00.

**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

28. Respondent Hamilton's registration is subject to discipline because it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when it issued six electronic certificates of compliance certifying that the cars complied with applicable laws and regulations when, in fact, they should not have passed inspection, were not physically present during the inspection, and were not inspected as required. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) The underlying circumstances are set forth more particularly in paragraphs 25 through 27, above.











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4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Hamilton Union Service;

5. Revoking or suspending Smog Check Inspector License No. EO 631117 and Smog Check Repair Technician License No. EI 631117 issued to Ja Mare Dejhon Perry;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ja Mare Dejhon Perry;

7. Ordering Hamilton Union Service, Hossain Erfan Khaziri, and Ja Mare Dejhon Perry to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

8. Taking such other and further action as deemed necessary and proper.

DATED: July 3, 2014

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

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