

1 KAMALA D. HARRIS
2 Attorney General of California
3 KENT D. HARRIS
4 Supervising Deputy Attorney General
5 ELENA L. ALMANZO
6 Deputy Attorney General
7 State Bar No. 131058
8 1300 I Street, Suite 125
9 P.O. Box 944255
10 Sacramento, CA 94244-2550
11 Telephone: (916) 322-5524
12 Facsimile: (916) 327-8643
13 *Attorneys for Complainant*

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
13 **ECONOMY SMOG**
14 **MARK A. PRICE, OWNER**
15 1019 Norboe Avenue
Corcoran, California 93212
16 **Automotive Repair Dealer No. ARD 234152**
Smog Check Station No. RC 234152
17 **MARK ALLEN PRICE**
18 1630 Brewer Avenue
Corcoran, California 93212
19 **Smog Check Inspector License No.**
20 **EO138552 (formerly Advanced Emission**
Specialist Technician License No. EA
138552

Case No. 79/15-12

ACCUSATION

Respondent.

23 || Patrick Dorais ("Complainant") alleges:

PARTIES

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

27 //

28 //

Mark A. Price, Owner of Economy Smog

2 2. On or about July 1, 2004, the Director of Consumer Affairs (“Director”) issued
3 Automotive Repair Dealer Registration Number ARD 234152 to Mark A. Price (“Respondent”),
4 as owner of Economy Smog. The automotive repair dealer registration was in full force and
5 effect at all times relevant to the charge brought herein and will expire on June 30, 2015, unless
6 renewed.

7 3. On or about June 9, 2008, the Bureau issued Smog Check Station License Number
8 RC 234152 to Respondent. The smog check station license was in full force and effect at all times
9 relevant to the charge brought herein and will expire on June 30, 2015, unless renewed.

Mark Allen Price

11 4. In or around 2002, the Bureau issued Advanced Emission Specialist Technician
12 License Number EA 138552 to Mark Allen Price, also known as Mark A. Price. Respondent's
13 advanced emission specialist technician license was due to expire on April 30, 2014. Pursuant to
14 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
15 renewed, pursuant to Respondent's election, as Smog Inspector License No. EO 138552.
16 Respondent's smog inspector license will expire on April 30, 2016, unless renewed.¹

JURISDICTION

18 5. Business and Professions Code (“Code”) section 9884.7 provides that the Director
19 may revoke an automotive repair dealer registration.

20 6. Code section 9884.13 states:

21 The expiration of a valid registration shall not deprive the director or chief of
22 jurisdiction to proceed with any investigation or disciplinary proceeding against an
automotive repair dealer or to render a decision invalidating a registration
temporarily or permanently.

¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (E1) license.

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

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

8 9. Health & Safety Code section 44072.8 states that, "When a license has been revoked
9 or suspended following a hearing under this article, any additional license issued under this
10 chapter in the name of the licensee may be likewise revoked or suspended by the director."

10. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that:

12 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced
13 Emission Specialist Technician license issued prior to the effective date of this
 regulation, the license may apply to renew as a Smog Check Inspector, Smog Check
 Repair Technician, or both.”

STATUTORY AND REGULATORY PROVISIONS

11. Code section 9884.7 states, in pertinent part:

23 (2) Causing or allowing a customer to sign any work order that does not state
24 the repairs requested by the customer or the automobile's odometer reading at the
time of repair.

25 (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

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

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

12. Code section 9884.8 states, in pertinent part:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. . . .

13. Code section 9884.9, subdivision (a), states in pertinent part:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer.

14. Code section 22, subdivision (a), states:

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

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

16. Health & 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 & Safety 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.

11

1 17. Health & Safety Code section 44072.10 states, in pertinent part:

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

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

8 18. Health & Safety Code section 44072.8 states that when a license has been revoked or
9 suspended following a hearing under this article, any additional license issued under this chapter
10 in the name of the licensee may be likewise revoked or suspended by the director.

11 19. California Code of Regulations, title 16, section 3356, states, in pertinent part:

12 (a) All invoices for service and repair work performed, and parts supplied, as
13 provided for in Section 9884.8 of the Business and Professions Code, shall comply
14 with the following:

15 (1) The invoice shall show the automotive repair dealer's registration number
16 and the corresponding business name and address as shown in the Bureau's records. If
17 the automotive repair dealer's telephone number is shown, it shall comply with the
18 requirements of subsection (b) of Section 3371 of this chapter.

19 (d) The automotive repair dealer shall give the customer a legible copy of the
20 invoice and shall retain a legible copy as part of the automotive repair dealer's records
21 pursuant to Section 9884.11 of the Business and Professions Code and Section 3358
22 of this article.

18 **COST RECOVERY**

19 20. Code section 125.3 provides, in pertinent part, that a Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 **UNDERCOVER OPERATION**

24 21. On or about January 24, 2014, a Bureau undercover operator (the "operator") took the
25 Bureau's 1994 Pontiac to Respondent's facility, Economy Smog, and requested a smog
26 inspection. Respondent told the operator to enter his name and address on a blank sales form that
27 did not include Respondent's name, location, automotive repair dealer registration number of the
28 vehicle, or the odometer reading, and the operator did so. Respondent then looked at the form and

1 told the operator to sign it, which he did. Respondent told the operator that the smog inspection
2 would cost \$49.95 plus the certificate. The operator did not receive a written estimate before
3 Respondent performed work on the vehicle or a copy of the document he signed.

4 22. While waiting for the vehicle, the operator observed an individual, who appeared to
5 be assisting respondent, put the emissions inspection system (“EIS”) unit exhaust probe into the
6 tail pipe of the vehicle and raise the vehicle’s RPM until Respondent stated “that’s good”. The
7 assistant then removed the exhaust probe and raised the hood. Respondent asked the assistant
8 whether an evaporative emission canister was installed on the vehicle or if anything was missing,
9 modified, or disconnected. The assistant relayed to Respondent that an evaporative emission
10 canister was mounted under the vehicle and nothing was missing, modified, or disconnected.
11 When the assistant told Respondent that the vehicle had an electronic EGR (exhaust gas
12 recirculation system) valve, Respondent retorted that they don’t check electronic ones, and
13 continued entering data into the EIS unit. The assistant put the EIS unit exhaust probe back into
14 the tail pipe of the vehicle and removed it a few minutes later. The operator observed that, aside
15 from performing a fuel cap integrity test and entering data into the EIS unit, Respondent did not
16 perform any part of the smog inspection.

17 23. Respondent pronounced the smog inspection complete and told the operator it cost
18 \$58. He provided the operator with a copy of invoice # [REDACTED] and a vehicle inspection report.

19 24. The Bureau obtained information from the vehicle information database showing that
20 Respondent performed a smog inspection on the 1994 Pontiac on January 24, 2014, resulting in
21 the issuance of electronic smog Certificate of Compliance No. [REDACTED]

22 25. The Bureau determined that the certificate of compliance was fraudulently issued in
23 that the vehicle was precluded from passing a lawful smog inspection because the exhaust gas
24 recirculation system was non-functional.

25 //

26 //

27 //

28 //

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

3 26. 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,
6 Respondent certified under penalty of perjury that the Bureau's 1994 Pontiac had passed a smog
7 inspection and was in compliance with applicable laws and regulations. In fact, the vehicle was
8 precluded from passing a lawful smog inspection because the exhaust gas recirculation system
9 was non-functional and the vehicle would not pass the inspection required by Health & Safety
10 Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

13 27. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
14 subdivision (a)(4), in that Respondent committed an act that constitutes fraud by issuing an
15 electronic smog certificate of compliance for the Bureau's 1994 Pontiac without ensuring that a
16 bona fide inspection was performed of the emission control devices and systems on the vehicle,
17 thereby depriving the people of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply With Code)

21 28. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
22 subdivision (a)(6), in that regarding the Bureau's 1994 Pontiac, Respondent failed to comply with
23 provisions of Code section 9884.9, subdivision (a), by failing to provide the operator with a
24 written estimate before performing the smog inspection on the Bureau's 1994 Pontiac, as set forth
25 in paragraph 21, above.

26 //

27 //

28 //

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

3 29. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
4 subdivision (a)(6), in that regarding the Bureau's 1994 Pontiac, Respondent, failed to materially
5 comply with California Code of Regulations, title 16, as follows:

6 a. Section 3356, subdivision (a)(1): Respondent failed to show his automotive repair
7 dealer registration number, business name, and address on Invoice No. # [REDACTED]

8 b. **Section 3356, subdivision (d):** Respondent failed to provide the operator with a
9 legible copy of Invoice No. [REDACTED]

FIFTH CAUSE FOR DISCIPLINE

(Failure to Record Odometer Reading on Work Order)

12 30. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
13 subdivision (a)(2), in that Respondent caused or allowed a customer to sign a work order that did
14 not state the automobile's odometer reading at the time of repair, as set forth in paragraph 21,
15 above.

SIXTH CAUSE FOR DISCIPLINE

(Motor Vehicle Inspection Program – Code Violations)

18 31. Respondent's smog check station license is subject to discipline pursuant to Health &
19 Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions
20 of that Code, as follows:

21 a. **Section 44012, subdivision (a):** Respondent failed to ensure that the emission
22 control tests were performed on the Bureau's 1994 Pontiac in accordance with procedures
23 prescribed by the department.

24 b. Section 44015: Respondent issued an electronic smog certificate of compliance for
25 the Bureau's 1994 Pontiac without ensuring that the vehicle was properly tested and inspected to
26 determine if it was in compliance with Health & Safety Code section 44012.

27 //

28 //

SEVENTH CAUSE FOR DISCIPLINE

(Motor Vehicle Inspection Program - Regulation Violations)

3 32. Respondent's smog check station license is subject to discipline pursuant to Health &
4 Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
5 of California Code of Regulations, title 16, as follows:

6 a. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
7 of compliance for the Bureau's 1994 Pontiac even though the vehicle had not been inspected in
8 accordance with section 3340.42.

9 b. Section 3340.42: Respondent failed to ensure that the required smog tests were
10 conducted on the Bureau's 1994 Pontiac in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

13 33. Respondent's smog check station license is subject to discipline pursuant to Health &
14 Safety Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
15 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of
16 compliance for the Bureau's 1994 Pontiac without ensuring that a bona fide inspection was
17 performed of the emission control devices and systems on the vehicle, thereby depriving the
18 people of the State of California of the protection afforded by the Motor Vehicle Inspection
19 Program.

NINTH CAUSE FOR DISCIPLINE

(Motor Vehicle Inspection Program - Code Violations)

22 34. Respondent's technician license is subject to discipline pursuant to Health & Safety
23 Code section 44072.2, subdivision (a), in that on or about January 24, 2014, regarding the
24 Bureau's 1994 Pontiac, Respondent violated sections of that Code as follows:

25 a. Section 44012, subdivision (f): Respondent failed to perform on the vehicle a visual
26 and/or functional check of the emission control devices in accordance with required procedures.

27 b. Section 44032: Respondent failed to perform tests of the emission control devices
28 and systems on the vehicle in accordance with Code section 44012, in that the vehicle was

1 precluded from passing a lawful smog inspection because the exhaust gas recirculation system
2 was non-functional

3 **TENTH CAUSE FOR DISCIPLINE**

4 (Motor Vehicle Inspection Program - Regulation Violations)

5 35. Respondent's technician license is subject to discipline pursuant to Health & Safety
6 Code section 44072.2, subdivision (c), in that on or about January 24, 2014, regarding the
7 Bureau's 1994 Pontiac, Respondent failed to comply with provisions of California Code of
8 Regulations, title 16 ("Regulations"), as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the vehicle in
10 accordance with Health & Safety Code section 44012.

11 b. **Section 3341.41, subdivision (c):** Respondent knowingly entered false information
12 into the emission inspection system.

13 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle
14 in accordance with the Bureau's specifications.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 (Dishonesty, Fraud, or Deceit)

17 36. Respondent's technician license is subject to discipline pursuant to Health & Safety
18 Code section 44072.2, subdivision (d), in that on or about January 24, 2014, Respondent
19 committed a dishonest, fraudulent, or deceitful act whereby another is injured by issuing an
20 electronic smog certificate of compliance for the Bureau's 1994 Pontiac without performing a
21 bona fide inspection of the emission control devices and systems on the vehicle, thereby
22 depriving the people of the State of California of the protection afforded by the Motor Vehicle
23 Inspection Program.

24 //

25 //

26 //

27 //

28 //

MATTERS IN AGGRAVATION

2 37. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges as follows:

Economy Smog

5 a. On or about August 3, 2010, the Bureau issued Citation No. C2011-0116 against
6 Respondent for violation of Health & Safety Code section 44012, subdivision (f), (failure to
7 perform a visual/functional check of emission control devices according to procedures prescribed
8 by the department) and California Code of Regulations, title 16 (“Regulation”), section 3340.35,
9 subdivision (c), (issuing a certificate of compliance to a vehicle that was improperly tested). On
10 July 9, 2010, Respondent issued a certificate of compliance to a Bureau undercover vehicle with
11 the ignition timing adjusted beyond specifications and failed to perform the exhaust gas
12 recirculation valve functional test. The Bureau assessed civil penalties totaling \$500 against
13 Respondent for the violations. Respondent paid the fine on February 3, 2011.

14 b. On or about August 30, 2011, the Bureau issued Citation No. C2012-0192 against
15 Respondent for violation of Health & Safety Code sections 44012, subdivision (f). On August 3,
16 2011, Respondent issued a certificate of compliance to a Bureau undercover vehicle with a
17 missing air injection reactor (AIR) system exhaust tubes and check valves. The Bureau assessed
18 civil penalties totaling \$1,500 against Respondent for the violations. Respondent paid the fine on
19 January 6, 2014.

20 c. On or about June 25, 2012, the Bureau issued Citation No. C2012-1845 against
21 Respondent for violation of Health & Safety Code section 44012, subdivision (f). On May 17,
22 2012, Respondent issued a certificate of compliance to a Bureau undercover vehicle with a
23 missing positive crankcase ventilation valve, vacuum hose, and crankcase vent breather hose.
24 The Bureau assessed civil penalties totaling \$1,500 against Respondent for the violations.
25 Respondent paid the fine on August 16, 2013.

Mark Allen Price

27 d. On or about August 3, 2010, the Bureau issued Citation No. M2011-0117 against
28 Respondent for violations of Health & Safety Code section 44032 (qualified technicians shall

1 perform tests of emission control systems and devices in accordance with Health & Safety Code
2 section 44012), and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test,
3 and repair vehicles in accordance with Health & Safety Code sections 44012 and 44035, and
4 Regulation 3340.42). On July 9, 2010, Respondent issued a certificate of compliance to a Bureau
5 undercover vehicle with the ignition timing adjusted beyond specifications and failed to perform
6 the exhaust gas recirculation valve functional test. Respondent was directed to complete an 8
7 hour training course and to submit proof of completion to the Bureau within 30 days from receipt
8 of the citation. Respondent completed the training on January 12, 2011.

9 **OTHER MATTERS**

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

15 ///

16 39. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
17 Number RC 234152, issued to Mark A. Price, owner of Economy Smog, is revoked or suspended,
18 any additional license issued under this chapter in the name of Mark A. Price may be likewise
19 revoked or suspended by the Director.

20 40. Under Health & Safety Code section 44072.8, if Respondent's Smog Check
21 Inspector License No. EO 138552 (formerly Advanced Emission Specialist Technician License
22 No. EA 138552), is revoked or suspended, any additional license issued under this chapter in the
23 name of Respondent Mark A. Price may likewise be revoked or suspended.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 234152, issued to Mark A. Price, as owner of Economy Smog;

- 1 2. Revoking or suspending any other automotive repair dealer registration issued to
- 2 Mark A. Price;
- 3 3. Revoking or suspending Smog Check Station License Number RC 234152 issued to
- 4 Mark A. Price, as owner of Economy Smog;
- 5 4. Revoking or suspending the Smog Check Inspector License No. EO 138552
6 (formerly Advanced Emission Specialist Technician License No. EA 138552), issued to Mark
- 7 Allen Price;
- 8 5. Revoking or suspending any additional license issued under Chapter 5 of the
9 Health & Safety Code in the name of Mark Allen Price;
- 10 6. Ordering Mark Allen Price to pay the Bureau of Automotive Repair the reasonable
11 costs of the investigation and enforcement of this case, pursuant to Business and Professions
12 Code section 125.3; and,
- 13 7. Taking such other and further action as deemed necessary and proper.

DATED: 1-25-14

Patrick Dorais by Doug Balatti
PATRICK DORAISS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
DUG B
Assist. Chief

SA2014115114
32032094.doc