

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DAVID E. HAUSFELD
Deputy Attorney General
4 State Bar No. 110639
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2025
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 **JOE'S SMOG TEST ONLY**
YOUSEF K. ZEIT, OWNER
14 **147 East Baseline Street, #E**
San Bernardino, CA 92410

15 **Automotive Repair Dealer Registration No.**
ARD 266397
16 **Smog Check, Test Only, Station License No.**
TC 266397

17 **YOUSEF K. ZEIT**
18 **3845 Polk Street, Apt. # 57**
Riverside, CA 92505

19 **Advanced Emission Specialist Technician**
20 **License No. EA 632736 (to be redesignated**
21 **upon renewal as EO 632736 and/or EI**
632736)

Case No. 79/13-05
OAH No. 2013020145
FIRST AMENDED ACCUSATION

22 Respondents.

23
24 Complainant alleges:

25 **PARTIES**

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

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

5 12. Health & Saf. Code section 44072.2 states, in pertinent part:

6 The director may suspend, revoke, or take other disciplinary action against a
7 license as provided in this article if the licensee, or any partner, officer, or director
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
pursuant to it, which related to the 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 13. Health & Saf. Code section 44072.8 states:

15 "When a license has been revoked or suspended following a hearing under this article, any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

18 14. Health & Saf. Code section 44072.10 states, in pertinent part:

19

20 (c) The department shall revoke the license of any smog check technician or
21 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
22 the following:

23

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

25 15. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog
26 check stations shall be performed in accordance with procedures prescribed by the department,
27 pursuant to Section 44013.

28 ///

1 **REGULATORY PROVISIONS**

2 16. California Code of Regulations, title 16, section 3340.24 (c), states:

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

6 17. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

7 "A smog check technician shall comply with the following requirements at all times while
8 licensed.

9 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
10 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
11 3340.42 of this article.

12 "..."

13 18. California Code of Regulations, title 16, section 3340.35, provides, in pertinent part,
14 that a licensed station shall issue a certificate of compliance . . . to the owner or operator of any
15 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
16 this article and has all the required emission control equipment and devices installed and
17 functioning correctly.

18 19. California Code of Regulations, title 16, section 3340.41 (c), states:

19 "No person shall enter into the emissions inspection system any vehicle identification
20 information or emission control system identification data for any vehicle other than the one
21 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
22 information about the vehicle being tested."

23 20. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part,
24 that smog check stations and smog check technicians shall conduct tests and inspections in
25 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in
26 subsections (a) and (b) of Section 3340.17.

27 ///

28 ///

1

COST RECOVERY

2 21. Section 125.3 of the Code provides, in pertinent part, that the Director may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6

VID DATA REVIEW

7 22. In or about February 2012, the BAR initiated an investigation of Respondents based
8 on a review of information from the BAR's vehicle information database (VID), which indicated
9 that they may be engaging in fraudulent smog check inspections.

10 23. Beginning in February of 2012, a representative of the BAR conducted a detailed
11 review of VID data for all smog inspections performed at Respondent's automotive repair
12 dealership for the period of October 1, 2011 through March 26, 2012. The review showed a
13 pattern of OBD II² diagnostic trouble codes stored in the memory of the power train control
14 module (PCM) on different vehicles that received smog certificates in the six month period. The
15 BAR specifically examined the VID data, in detail, for nine (9) of the vehicles that were certified
16 from October 22, 2011 to March 9, 2012 and it was determined that none of them support the
17 OBD II code. Vehicles 1 through 9, set forth in Table 1, in paragraph 23 below, were all certified
18 with various pending codes stored in the PCM memory while the original equipment
19 manufacturer (OEM) service information shows these vehicles do not support the pending codes
20 stored in the PCM memory.

21 24. The BAR representative obtained information indicating that none of these codes
22 were applicable to the nine vehicles. The VID data also showed that the inspections on all of the
23 vehicles were performed under the technician license of Respondent Zeit. The BAR concluded

24

25 ² The On Board Diagnostic, generation II (OBD II) functional test is an automated
26 function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to
27 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC)
28 which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically
retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

1 that Respondent performed the smog inspections on the vehicles using a different vehicle(s)
 2 during the OBD II tests, a method known as clean-plugging,³ resulting in the issuance of
 3 fraudulent certificates of compliance for the vehicles that were tested as outlined in the following
 4 table.

5 **TABLE 1**

Date & Time of Inspection	Vehicle Certified & License or Vin No.	Certificate No.
1. 10/22/2011 9:38 – 9:52 hours	1999 Chevy C1500, 4DML043	WZ898857C
2. 12/12/2011 15:01 – 15:14 hours	2001 Toyota Sienna, 4VCM487	XB631059C
3. 12/16/2011 11:24 – 11:39 hours	1997 Volkswagen Jetta, 6EKG104	XB631088C
4. 1/7/2012 12:45 – 12:59 hours	1998 Acura Integra, 4XVY044	XB986584C
5. 1/12/2012 12:58 – 13:06 hours	2000 Dodge Neon, 4FVP765	XD092367C
6. 2/6/2012 12:29 – 12:42 hours	1999 Dodge B1500, 5LHY450	XD543357C
7. 3/1/2012 16:45 – 16:55 hours	2005 Chevy Express 2500, 7X39230	XD992463C
8. 3/2/2012 10:04 – 10:16 hours	2002 Honda Civic, 4XNZ884	XD992467C
9. 3/9/2012 8:57 – 9:16 hours	2000 Toyota Tacoma, 6G44918	XF093534C

17
 18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 25. Respondent's dealer registration is subject to disciplinary action pursuant to Bus. &
 21 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
 22 which he knew or in the exercise of reasonable care should have known to be untrue or
 23 misleading, as follows: Respondent certified that vehicles 1 through 9, identified in Table 1
 24 above, had passed inspection and were in compliance with applicable laws and regulations. In

25 ³ Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
 26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
 27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
 28 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
 control system or component failure.

1 fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that
2 he substituted or used different vehicles during the OBD II functional tests in order to issue smog
3 certificates of compliance for the vehicles, and did not actually test or inspect the vehicles as
4 required by Health & Saf. Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 26. Respondent's dealer registration is subject to disciplinary action pursuant to Bus. &
8 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute
9 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 9, identified in
10 Table 1 above, without performing bona fide inspections of the emission control devices and
11 systems on the vehicles, thereby depriving the People of the State of California of the protection
12 afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Violations of Motor Vehicle Inspection Program)**

15 27. Respondent's smog check station license is subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
17 following sections of that Code:

18 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
19 devices and systems required by law for vehicles 1 through 9, identified in Table 1 above, were
20 installed and functioning correctly in accordance with test procedures.

21 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the emission
22 control tests were performed on vehicles 1 through 9, identified in Table 1 above, in accordance
23 with procedures prescribed by the department.

24 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
25 compliance for vehicles 1 through 9, identified in Table 1 above, without ensuring that the
26 vehicles were properly tested and inspected to determine if they were in compliance with Health
27 & Saf. Code section 44012.

28

1 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
2 compliance for vehicles 1 through 9, identified in Table 1 above, by certifying that the vehicles
3 had been inspected as required when, in fact, they had not.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

6 28. Respondent's smog check station license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
8 provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
10 electronic smog certificates of compliance for vehicles 1 through 9, identified in Table 1 above.

11 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
12 compliance for vehicles 1 through 9, identified in Table 1 above, even though the vehicles had
13 not been inspected in accordance with section 3340.42.

14 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
15 conducted on vehicles 1 through 9, identified in Table 1 above, in accordance with the BAR's
16 specifications.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Dishonesty, Fraud or Deceit)**

19 29. Respondent's smog check station license is subject to disciplinary action pursuant to
20 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
21 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
22 compliance for vehicles 1 through 9, identified in Table 1 above, without performing bona fide
23 inspections of the emission control devices and systems on the vehicles, thereby depriving the
24 People of the State of California of the protection afforded by the Motor Vehicle Inspection
25 Program.

26 ///

27 ///

28 ///

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violations of Motor Vehicle Inspection Program)**

3 30. Respondent Zeit's technician license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
5 following sections of that Code:

6 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
7 devices and systems required by law for vehicles 1 through 9, identified in Table 1 above, were
8 installed and functioning correctly in accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to perform the emission control
10 tests on vehicles 1 through 9, identified in Table 1 above, in accordance with procedures
11 prescribed by the department.

12 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
13 compliance for vehicles 1 through 9, identified in Table 1 above, without properly testing and
14 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section
15 44012.

16 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of
17 compliance for vehicles 1 through 9, identified in Table 1 above, by certifying that the vehicles
18 had been inspected as required when, in fact, they had not.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

21 31. Respondent Zeit's technician license is subject to disciplinary action pursuant to
22 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
23 provisions of California Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic smog certificates of compliance for vehicles 1 through 9, identified in Table 1 above.

26 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
27 through 9, identified in Table 1 above, in accordance with Health & Saf. Code sections 44012 and
28 44035, and California Code of Regulations, title 16, section 3340.42.

1 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection
2 system vehicle identification information or emission control system identification data for a
3 vehicle other than the one being tested for vehicles 1 through 9, identified in Table 1 above.

4 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
5 through 9, identified in Table 1 above, in accordance with the Bureau's specifications.

6 **EIGHTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit)**

8 32. Respondent Zeit's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
10 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of
11 compliance for vehicles 1 through 9, identified in Table 1 above, without performing bona fide
12 inspections of the emission control devices and systems on the vehicles, thereby depriving the
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

15 **OTHER MATTERS**

16 33. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
17 suspend, revoke or place on probation the registration for all places of business operated in this
18 state by Respondent Yousef K. Zeit, owner of Joe's Smog Test Only, upon a finding that
19 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
20 regulations pertaining to an automotive repair dealer.

21 34. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
22 License Number TC 266397, issued to Respondent Yousef K. Zeit, owner of Joe's Smog Test
23 Only, is revoked or suspended, any additional license issued under the same chapter in the name
24 of said licensee may be likewise revoked or suspended by the Director.

25 35. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
26 Technician License Number EA 632736, upon renewal and redesignation as EO 632736 and/or
27 El 632736, issued to Yousef K. Zeit, is revoked or suspended, any additional license issued under
28 this chapter 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 herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 266397, issued to Yousef K. Zeit, owner of Joe's Smog Test Only;
2. Revoking or suspending any other automotive repair dealer registration issued to Yousef K. Zeit;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 266397, issued to Yousef K. Zeit, owner of Joe's Smog Test Only;
4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 632736, as redesignated Smog Check Inspector License Number EO 632736 and/or Smog Check repair Technician License Number EI 632736, issued to Yousef K. Zeit;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Yousef K. Zeit;
6. Ordering Yousef K. Zeit 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;
7. Taking such other and further action as deemed necessary and proper.

DATED: 9-30-13

Pat Dorais by Jany B...
PATRICK DORAIS
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
JOSE BALATH

SD2012703601
70760234.doc