

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANOTHER SMOG TEST ONLY CENTER

1075 #A Santa Rosa Avenue
Santa Rosa, CA 95404

Mailing Address:

2360 Mendocino Avenue A2 #173
Santa Rosa, CA 95403

**RICHARD DANIEL FENTON, PARTNER
ZENE FAWN FENTON, PARTNER**

Automotive Repair Dealer License
No. ARD 236899
Smog Check Test Only Station License No.
TC 236899

and

RICHARD DANIEL FENTON

2360 Mendocino Avenue A2 #173
Santa Rosa, CA 95403

Advanced Emission Specialist Technician
License No. EA 138504

Case No. 79/13-41

Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

NOV 07 2013

DATED: October 16, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
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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 Against:

Case No. 79/13-41

13 **ANOTHER SMOG TEST ONLY CENTER**
1075 #A Santa Rosa Avenue
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14 **Mailing Address:**
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15 Santa Rosa, California 95403
16 **RICHARD DANIEL FENTON, PARTNER**
ZENE FAWN FENTON, PARTNER

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 **Automotive Repair Dealer License**
No. ARD 236899
18 **Smog Check Test Only Station License**
No. TC 236899

19 **and**

20 **RICHARD DANIEL FENTON**
21 2360 Mendocino Avenue A2 #173
Santa Rosa, California 95403

22 **Advanced Emission Specialist Technician**
23 License No. EA 138504

24 Respondents.

25
26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
27 entitled proceedings that the following matters are true:
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PARTIES

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2 1. Patrick Dorais (Complainant) is the Acting Chief of the Bureau of Automotive
3 Repair. He brought this action solely in his official capacity and is represented in this matter by
4 Kamala D. Harris, Attorney General of the State of California, by Shana A. Bagley, Deputy
5 Attorney General.

6 2. Respondents Another Smog Test Only Center, with Richard Daniel Fenton and Zene
7 Fawn Fenton as partners, and Richard Daniel Fenton, as the technician, (Respondents) are
8 representing themselves in this proceeding and have chosen not to exercise their right to be
9 represented by counsel.

10 3. On or about April 25, 2005, the Bureau of Automotive Repair issued Automotive
11 Repair Dealer Registration No. ARD 236899 to Another Smog Test Only Center (Respondent
12 Another Smog). The Automotive Repair Dealer Registration was in full force and effect at all
13 times relevant to the charges brought in Accusation No. 79/13-41 and will expire on December
14 31, 2013, unless renewed. Pursuant to the Decision and Order in Case No. 79/11-51, the
15 Respondent Another Smog is on probation until February 6, 2016.

16 4. On or about May 10, 2005, the Bureau of Automotive Repair issued Smog Check,
17 Test Only, Station License No. TC 236899 to Respondent Another Smog. The Smog Check, Test
18 Only, Station License was in full force and effect at all times relevant to the charges brought in
19 Accusation No. 79/13-41 and will expire on December 31, 2013, unless renewed. Pursuant to the
20 Decision and Order in Case No. 79/11-51, the Respondent Another Smog is on probation until
21 February 6, 2016.

22 5. On a date uncertain in 1998, the Bureau issued Advanced Emission Specialist
23 Technician License No. EA 138504 to Richard Daniel Fenton (Respondent Fenton). The
24 Technician License was in full force and effect at all times relevant to the charges brought in
25 Accusation No. 79/13-41 and will expire on February 28, 2014, unless renewed. Upon the
26 renewal of the license, the license will be redesignated as EO 138504 and/or EI 138504. Pursuant
27 to the Decision and Order in Case No. 79/11-51, the Respondent Fenton is on probation until
28 February 6, 2016.

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CIRCUMSTANCES IN MITIGATION

13. Respondents are admitting responsibility at an early stage in the proceedings.

CONTINGENCY

14. This stipulation shall be subject to approval by the Director of Consumer Affairs or the Director's designee. Respondents understand and agree that counsel for Complainant and the staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this stipulation and settlement, without notice to or participation by Respondents. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

17. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 236899,
3 Smog Check, Test Only, Station License No. TC 236899, and Smog Technician - Advanced
4 Emission Specialist License No. EA 138504 to issued to Respondents are revoked. However, the
5 revocations are stayed and, subsequent and in addition to the terms of probation as ordered in
6 Case Number 79/11-51, Respondents are placed on probation for two (2) years on the following
7 terms and conditions.

8 1. **Obey All Laws.** Comply with all statutes, regulations and rules governing
9 automotive inspections, estimates and repairs.

10 2. **Reporting.** Respondents or Respondents' authorized representative must report in
11 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
12 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
13 maintaining compliance with the terms and conditions of probation.

14 3. **Report Financial Interest.** Within 30 days of the effective date of this action, report
15 any financial interest which any partners, officers, or owners of the Respondent facility may have
16 in any other business required to be registered pursuant to Section 9884.6 of the Business and
17 Professions Code.

18 4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
19 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

20 5. **Jurisdiction.** If an accusation is filed against Respondents during the term of
21 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
22 until the final decision on the accusation, and the period of probation shall be extended until such
23 decision.

24 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
25 Respondents have failed to comply with the terms and conditions of probation, the Department
26 may, after giving notice and opportunity to be heard temporarily or permanently invalidate the
27 Automotive Repair Dealer Registration and/or suspend or revoke the Smog Station License
28 and/or Technician License.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 5 JULY 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

SHANA A. BAGLEY
Deputy Attorney General
Attorneys for Complainant

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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 Against:

Case No. 79/13-41

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16 **RICHARD DANIEL FENTON, PARTNER**
ZENE FAWN FENTON, PARTNER

ACCUSATION
SMOG CHECK

17 **Automotive Repair Dealer License**
No. ARD 236899
18 **Smog Check Test Only Station License**
No. TC 236899

19 and

20 **RICHARD DANIEL FENTON**
2360 Mendocino Avenue A2 #173
21 Santa Rosa, California 95403

22 **Advanced Emission Specialist Technician**
23 License No. EA 138504

24 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

6 **Automotive Repair Dealer Registration**

7 2. On or about April 25, 2005, the Bureau issued Automotive Repair Dealer Registration
8 Number ARD 236899 (registration) to Another Smog Test Only Center (Respondent Another
9 Smog) with Richard Daniel Fenton and Zene Fawn Fenton as partners. The registration was in
10 full force and effect at all times relevant to the charges brought in this Accusation and will expire
11 on December 31, 2013, unless renewed.

12 **Smog Check Test Only Station License**

13 3. On or about May 10, 2005, the Bureau issued Smog Check Test Only Station License
14 Number TC 236899 (station license) to Respondent Another Smog. The station license was in
15 full force and effect at all times relevant to the charges brought in this Accusation and will expire
16 on December 31, 2013, unless renewed.

17 **Advanced Emission Specialist Technician License**

18 4. On a date uncertain in 1998, the Bureau issued Advanced Emission Specialist
19 Technician License Number EA 138504 (technician license) to Richard Daniel Fenton
20 (Respondent Fenton). The technician license was in full force and effect at all times relevant to
21 the charges brought in this Accusation and will expire on February 28, 2014, unless renewed.

22 **JURISDICTION**

23 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the
24 Bureau of Automotive Repair, under the authority of the following laws. All sections references
25 are to the Business and Professions Code (Code) unless otherwise indicated.

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

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

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

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

14 **STATUTORY PROVISIONS**

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

19 11. Code section 9884.7 states, in part:

20 (a) The director, where the automotive repair dealer cannot show there was a bona
21 fide error, may deny, suspend, revoke, or place on probation the registration of an
22 automotive repair dealer for any of the following acts or omissions related to the
23 conduct of the business of the automotive repair dealer, which are done by the
24 automotive repair dealer or any automotive technician, employee, partner, officer, or
25 member of the automotive repair dealer.

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

(4) Any other conduct that constitutes fraud.

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(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(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 9884.9, subdivision (a), states, in 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. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. . . .

13. Health and Safety Code section 44072.2 states:

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.

14. 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.

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1 **COST RECOVERY**

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

5 **UNDERCOVER OPERATION – 2001 CHRYSLER 300M**

6 16. On or about May 18, 2012, a Bureau undercover operator drove a Bureau-
7 documented 2001 Chrysler 300M to Respondent Another Smog's facility and requested a smog
8 inspection. The vehicle could not pass the visual portion of a smog inspection because the
9 vehicle's Positive Crankcase Ventilation (PCV) system was missing.

10 17. Although not requested and not specifically authorized by the operator, Respondent
11 Fenton performed a partial pre-inspection. Respondent Fenton did not notify the operator that the
12 partial pretest might not indicate the likelihood of the vehicle passing a subsequent official
13 inspection. Respondent Fenton did not complete the smog inspection and returned the vehicle to
14 the operator. He instructed the operator that the PCV supply hose required repair before the
15 vehicle could pass a smog inspection. Respondent Fenton did not charge the operator for the
16 inspection and did not provide her with an estimate, invoice, or work order.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Failure to Obtain Authorization and to Provide Estimate)**

19 18. Respondent Another Smog has subjected its registration to discipline under Code
20 section 9884.9, subdivision (a), in that on or about May 18, 2012, regarding the 2001 Chrysler
21 300M, it (1) failed to obtain specific authorization from the customer before commencing with
22 the partial pretest and (2) failed to provide a written estimate for parts and labor to the customer
23 prior to performing the partial pretest.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Violation of the Motor Vehicle Inspection Program)**

26 19. Respondent Another Smog has subjected its station license to discipline under Health
27 and Safety Code section 44072.2, subdivision (a), in that on or about May 18, 2012, regarding the
28 2001 Chrysler 300M, it violated the following Health and Safety Code sections:

1 a. **44011.3:** Respondent Another Smog performed an improper and unauthorized partial
2 pretest.

3 b. **44012, subdivision (f):** Respondent Another Smog failed to perform emission
4 control tests on that vehicle in accordance with procedures prescribed by the Department.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

7 20. Respondent Another Smog has subjected its station license to discipline under Health
8 and Safety Code section 44072.2, subdivision (c), in that on or about May 18, 2012, regarding the
9 2001 Chrysler 300M, it violated the following California Code of Regulations, title 16,
10 (Regulations) sections:

11 a. **3353:** Respondent Another Smog failed to obtain specific authorization from the
12 customer before commencing with the partial pretest.

13 b. **3353, subdivision (a):** Respondent Another Smog failed to provide the customer with
14 a written estimate for parts and labor prior to the partial pretest.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Motor Vehicle Inspection Program)**

17 21. Respondent Fenton has subjected his technician license to discipline under Health and
18 Safety Code section 44072.2, subdivision (a), in that on or about May 18, 2012, regarding the
19 2001 Chrysler 300M, he violated the following Health and Safety Code sections:

20 a. **44012, subdivision (f):** Respondent Fenton failed to perform emission control tests
21 on that vehicle in accordance with procedures prescribed by the Department.

22 b. **44032:** Respondent Fenton failed to perform tests of the emission control devices and
23 systems on that vehicle in accordance with Health and Safety Code section 44012.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

3 22. Respondent Fenton has subjected his technician license to discipline under Health and
4 Safety Code section 44072.2, subdivision (c), in that on or about May 18, 2012, regarding the
5 2001 Chrysler 300M, he violated the following Regulations sections:

6 a. **3340.30, subdivision (a):** Respondent Fenton failed to inspect and test that vehicle in
7 accordance with Health and Safety Code section 44012.

8 b. **3340.42:** Respondent Fenton failed to conduct the required smog tests and
9 inspections on that vehicle in accordance with the Bureau's specifications.

10 **UNDERCOVER OPERATION – 2002 DODGE DAKOTA**

11 23. On or about May 18, 2012, a Bureau undercover operator drove a Bureau-
12 documented 2002 Dodge Dakota to Respondent Another Smog's facility and requested a smog
13 inspection. The vehicle could not pass the visual portion of a smog inspection because the
14 vehicle's Evaporative Emissions Control (EVAP) canister was missing. The operator was not
15 asked to sign any paperwork nor was he provided any paperwork prior to the smog inspection.
16 Respondent Fenton performed the smog inspection and issued electronic Certificate of
17 Compliance No. [REDACTED] for the vehicle even though it could not have passed the visual
18 portion of the smog inspection. The operator paid \$60 for the smog inspection and received a
19 copy of Invoice No. [REDACTED] and the Vehicle Inspection Report ("VIR").

20 **SIXTH CAUSE FOR DISCIPLINE**

21 (Misleading Statements)

22 24. Respondent Another Smog has subjected its registration to discipline under Code
23 section 9884.7, subdivision (a)(1), in that on or about May 18, 2012, it made statements which it
24 knew or which by exercise of reasonable care it should have known were untrue or misleading
25 when it issued electronic Certificate of Compliance No. [REDACTED] for the 2002 Dodge Dakota,
26 certifying that the vehicle complied with applicable laws and regulations when, in fact, the
27 vehicle's EVAP canister was missing.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 25. Respondent Another Smog has subjected its registration to discipline under Code
4 section 9884.7, subdivision (a)(4), in that on or about May 18, 2012, it committed acts that
5 constitute fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the 2002
6 Dodge Dakota, without performing a bona fide inspection of the emission control devices and
7 systems on that vehicle, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program.

9 **EIGHTH CAUSE FOR DISCIPLINE**

10 **(Violation of the Motor Vehicle Inspection Program)**

11 26. Respondent Another Smog has subjected its station license to discipline under Health
12 and Safety Code section 44072.2, subdivision (a), in that on or about May 18, 2012, regarding the
13 2002 Dodge Dakota, it violated the following Health and Safety Code sections:

14 a. **44012, subdivision (a):** Respondent Another Smog failed to determine that all
15 emission control devices and systems required by law were installed and functioning correctly in
16 accordance with test procedures.

17 b. **44012, subdivision (f):** Respondent Another Smog failed to perform emission
18 control tests on that vehicle in accordance with procedures prescribed by the Department.

19 c. **44015, subdivision (a)(1):** Respondent Another Smog issued electronic Certificate
20 of Compliance No. [REDACTED] for a vehicle that has been tampered with.

21 d. **44015, subdivision (b):** Respondent Another Smog issued electronic Certificate of
22 Compliance No. [REDACTED] without properly testing and inspecting the vehicle to determine if
23 it complied with Health and Safety Code section 44012.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 27. Respondent Another Smog has subjected its station license to discipline under Health
4 and Safety Code section 44072.2, subdivision (c), in that on or about May 18, 2012, regarding the
5 2002 Dodge Dakota, it violated the following Regulations sections:

6 a. **3340.24, subdivision (c):** Respondent Another Smog falsely or fraudulently issued
7 electronic Certificate of Compliance No. [REDACTED] without performing a bona fide inspection
8 of the emission control devices and systems on that vehicle as required by Health and Safety
9 Code section 44012.

10 b. **3340.35, subdivision (c):** Respondent Another Smog issued electronic Certificate of
11 Compliance No. [REDACTED] even though that vehicle had not been inspected in accordance
12 with the Regulations section 3340.42.

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

15 d. **3353:** Respondent Another Smog failed to obtain specific authorization from the
16 customer before commencing the smog inspection.

17 e. **3353, subdivision (a):** Respondent Another Smog failed to provide the customer with
18 a written estimate for parts and labor prior to the smog inspection.

19 **TENTH CAUSE FOR DISCIPLINE**

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

21 28. Respondent Another Smog subjected its station license to discipline under Health and
22 Safety Code section 44072.2, subdivision (d), in that on or about May 18, 2012, regarding the
23 2002 Dodge Dakota, it committed acts involving dishonesty, fraud, or deceit whereby another
24 was injured. Respondent Another Smog issued electronic Certificate of Compliance No.
25 [REDACTED] without performing a bona fide inspection of the emission control devices and
26 systems on the vehicle, thereby depriving the People of the State of California of the protection
27 afforded by the Motor Vehicle Inspection Program.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

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

3 29. Respondent Fenton has subjected his technician license to discipline under Health and
4 Safety Code section 44072.2, subdivision (a), in that on or about May 18, 2012, regarding the
5 2002 Dodge Dakota, he violated the following Health and Safety Code sections:

6 a. **44012, subdivision (a):** Respondent Fenton failed to determine that all emission
7 control devices and systems required by law were installed and functioning correctly in
8 accordance with test procedures.

9 b. **44012, subdivision (f):** Respondent Fenton failed to perform emission control tests
10 on that vehicle in accordance with procedures prescribed by the Department.

11 c. **44032:** Respondent Fenton failed to perform tests of the emission control devices and
12 systems on that vehicle in accordance with Health and Safety Code section 44012.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

15 30. Respondent Fenton has subjected his technician license to discipline under Health and
16 Safety Code section 44072.2, subdivision (c), in that on or about May 18, 2012, regarding the
17 2002 Dodge Dakota, he violated the following Regulations sections:

18 a. **3340.24, subdivision (c):** Respondent Fenton falsely or fraudulently issued
19 electronic Certificate of Compliance No. [REDACTED] without performing a bona fide inspection
20 of the emission control devices and systems on that vehicle as required by Health and Safety
21 Code section 44012.

22 b. **3340.30, subdivision (a):** Respondent Fenton failed to inspect and test that vehicle in
23 accordance with Health and Safety Code section 44012.

24 c. **3340.41, subdivision (c):** Respondent Fenton entered false information into the
25 Emission Inspection System for electronic Certificate of Compliance No. [REDACTED] by
26 entering "Pass" for the visual portion of the smog inspection.

27 d. **3340.42:** Respondent Fenton failed to conduct the required smog tests and
28 inspections on that vehicle in accordance with the Bureau's specifications.

1 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent Fenton has subjected his technician license to discipline under Health and
4 Safety Code section 44072.2, subdivision (d), in that on or about May 18, 2012, regarding the
5 2002 Dodge Dakota, he committed acts involving dishonesty, fraud or deceit whereby another
6 was injured. Respondent Fenton issued electronic Certificate of Compliance No. [REDACTED]
7 without performing a bona fide inspection of the emission control devices and systems on that
8 vehicle, thereby depriving the People of the State of California of the protection afforded by the
9 Motor Vehicle Inspection Program.

10 **DISCIPLINARY CONSIDERATIONS**

11 32. To determine the degree of penalty, if any, to be imposed upon Respondent,
12 Complainant alleges as follows:

13 a. On December 11, 2006, the Bureau issued Citation No. C07-0379 to Respondent
14 Another Smog against its registration and station licenses for violations of Health and Safety
15 Code section 44012, subdivision (f), (failure to perform a visual/functional check of emission
16 control devices) and Regulations section 3340.35, subdivision (c), (issuing a certificate of
17 compliance to a vehicle improperly tested). Respondent Another Smog issued a certificate of
18 compliance to a Bureau vehicle with a nonfunctional exhaust gas recirculation system. The
19 Bureau assessed and Respondent Another Smog paid a civil penalty of \$500.00.

20 b. On May 17, 2007, the Bureau issued Citation No. C07-0904 to Respondent Another
21 Smog against its registration and station licenses for violations of Health and Safety Code section
22 44012, subdivision (f), (failure to perform a visual/functional check of emission control devices)
23 and Regulation, section 3340.35, subdivision (c), (issuing a certificate of compliance to a vehicle
24 improperly tested). Respondent Another Smog issued a certificate of compliance to a Bureau
25 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
26 assessed and Respondent Another Smog paid a civil penalty of \$1,000.00.

27 c. On September 26, 2007, the Bureau issued Citation No. C08-0277 to Respondent
28 Another Smog against its registration and station licenses for violations of Health and Safety

1 Code section 44012, subdivision (f), (failure to perform a visual/functional check of emission
2 control devices) and Regulations section 3340.35, subdivision (c), (issuing a certificate of
3 compliance to a vehicle improperly tested). Respondent Another Smog issued a certificate of
4 compliance to a Bureau vehicle with a missing PAIR reed valve assembly. The Bureau assessed
5 a civil penalty of \$2,000.00. Respondent Another Smog appealed this citation on October 5,
6 2007, but then withdrew the appeal. Respondent Another Smog complied with this citation on
7 August 11, 2008.

8 d. On December 29, 2008, the Bureau issued Citation No. C09-0763 to Respondent
9 Another Smog against its registration and station licenses for violations of Health and Safety
10 Code section 44012, subdivision (f), (failure to perform a visual/functional check of emission
11 control devices) and Regulations section 3340.35, subdivision (c), (issuing a certificate of
12 compliance to a vehicle improperly tested). Respondent Another Smog issued a certificate of
13 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's
14 specifications. The Bureau assessed and Respondent Another Smog paid a civil penalty of
15 \$500.00.

16 e. On August 18, 2009, the Bureau issued Citation No. C2010-0139 to Respondent
17 Another Smog against its registration and station licenses for violations of Health and Safety
18 Code section 44012, subdivision (f), (failure to perform a visual/functional check of emission
19 control devices) and Regulations section 3340.35, subdivision (c), (issuing a certificate of
20 compliance to a vehicle improperly tested). Respondent Another Smog issued a certificate of
21 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's
22 specifications. The Bureau assessed and Respondent Another Smog paid a civil penalty of
23 \$1,000.00.

24 f. On March 26, 2001, the Bureau issued Citation No. M01-0452 to Respondent Fenton
25 against his technician license for violations of Health and Safety Code section 44032, (qualified
26 technicians shall perform tests of emission control systems and devices in accordance with Health
27 and Safety Code section 44012) and Regulations section 3340.30, subdivision (a), (qualified
28 technicians shall inspect, test, and repair vehicles in accordance with Health and Safety Code

1 sections 44012 and 44035 and Regulations section 3340.42). Respondent Fenton issued a
2 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
3 manufacturer's specifications. Respondent Fenton was required to attend an 8-hour training
4 course. Respondent Fenton complied with this citation on August 14, 2001.

5 g. On December 11, 2006, the Bureau issued Citation No. M07-0380 to Respondent
6 Fenton against his technician license for violations of Health and Safety Code section 44032,
7 (qualified technicians shall perform tests of emission control systems and devices in accordance
8 with Health and Safety Code section 44012) and Regulations section 3340.30, subdivision (a),
9 (qualified technicians shall inspect, test, and repair vehicles in accordance with Health and Safety
10 Code sections 44012 and 44035 and Regulations section 3340.42). Respondent Fenton issued a
11 certificate of compliance to a Bureau vehicle with a nonfunctional exhaust gas recirculation
12 system. Respondent Fenton was required to attend an 8-hour training course. Respondent Fenton
13 complied with this citation on December 13, 2006.

14 h. On May 17, 2007, the Bureau issued Citation No. M07-0905 to Respondent Fenton
15 against his technician license for violations of Health and Safety Code section 44032, (qualified
16 technicians shall perform tests of emission control systems and devices in accordance with Health
17 and Safety Code section 44012) and Regulations section 3340.30, subdivision (a), (qualified
18 technicians shall inspect, test, and repair vehicles in accordance with Health and Safety Code
19 sections 44012 and 44035 and Regulations section 3340.42). Respondent Fenton issued a
20 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
21 manufacturer's specifications. Respondent Fenton was required to attend a 16-hour training
22 course. Respondent Fenton complied with this citation on July 15, 2007.

23 i. On September 26, 2007, the Bureau issued Citation No. M08-0278 to Respondent
24 Fenton against his technician license for violations of Health and Safety Code section 44032,
25 (qualified technicians shall perform tests of emission control systems and devices in accordance
26 with section Health and Safety Code section 44012) and Regulations section 3340.30,
27 subdivision (a), (qualified technicians shall inspect, test, and repair vehicles in accordance with
28 Health and Safety Code sections 44012 and 44035 and Regulations section 3340.42). Respondent

1 Fenton issued a certificate of compliance to a Bureau vehicle with a missing PAIR reed valve
2 assembly. Respondent Fenton was required to attend a basic clean air car course. Respondent
3 Fenton appealed this citation on October 5, 2007, and then withdrew the appeal. Respondent
4 Fenton complied with this citation on November 18, 2007.

5 j. On December 29, 2008, the Bureau issued Citation No. M09-0764 to Respondent
6 Fenton against his technician license for violations of Health and Safety Code section 44032,
7 (qualified technicians shall perform tests of emission control systems and devices in accordance
8 with Health and Safety Code section 44012 and Regulations section 3340.30, subdivision (a),
9 (qualified technicians shall inspect, test, and repair vehicles in accordance with Health and Safety
10 Code sections 44012 and 44035 and Regulations section 3340.42). Respondent Fenton issued a
11 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
12 manufacturer's specifications. Respondent Fenton was required to attend an 8-hour training
13 course. Respondent Fenton complied with this citation on March 9, 2009.

14 k. On August 18, 2009, the Bureau issued Citation No. M2010-0140 to Respondent
15 Fenton against his technician license for violations of Health and Safety Code section 44032,
16 (qualified technicians shall perform tests of emission control systems and devices in accordance
17 with Health and Safety Code section 44012) and Regulations section 3340.30, subdivision (a)m
18 (qualified technicians shall inspect, test, and repair vehicles in accordance with Health and Safety
19 Code sections 44012 and 44035 and Regulations section 3340.42). Respondent Fenton issued a
20 certificate of compliance to a Bureau vehicle with the ignition timing adjusted beyond the
21 manufacturer's specifications. Respondent Fenton was required to attend a 16-hour training
22 course. Respondent Fenton complied with this citation on November 4, 2009.

23 l. On or about January 7, 2011, Accusation No. 79/11-51, was filed, alleging that
24 Respondent Another Smog and Respondent Fenton violated the following: Code section 9884.7,
25 subdivision (a)(1), (Misleading Statements), Code section 9884.7, subdivision (a)(4), (Fraud),
26 Health and Safety Code section 44072.2, subdivision (a), (Violation of the Motor Vehicle
27 Inspection Program), Health and Safety Code section 44072.2, subdivision (c), (Violations of
28 Regulations Pursuant to the Motor Vehicle Inspection Program), and Health and Safety Code

1 section 44072.2, subdivision (d), (Dishonesty, Fraud or Deceit). Effective February 6, 2012,
2 Respondent Another Smog's registration and station license and Respondent Fenton's technician
3 license were revoked, with the revocations stayed, and were placed on probation for 4 years with
4 15 days of suspension. Respondents agreed to be jointly and severally liable to pay \$7,254.65 for
5 cost recovery.

6 **OTHER MATTERS**

7 33. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
8 or permanently or refuse to validate, the registrations for all places of business operated in this
9 state by to Another Smog Test Only Center, upon a finding that it has, or is, engaged in a course
10 of repeated and willful violations of the laws and regulations pertaining to an automotive repair
11 dealer.

12 34. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
13 License Number TC 236899, issued to Another Smog Test Only Center, is revoked or suspended,
14 any additional license issued under this chapter in the name of said licensee may likewise be
15 suspended or revoked.

16 35. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
17 Technician License Number EA 138504, issued to Richard Daniel Fenton, is revoked or
18 suspended, any additional license issued under this chapter in the name of said licensee may
19 likewise be suspended or revoked.

20 **PRAYER**

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

- 23 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
24 Registration Number ARD 236899, issued to Another Smog Test Only Center;
- 25 2. Revoking, suspending, or placing on probation any other automotive repair dealer
26 registration issued in the name Another Smog Test Only Center;
- 27 3. Revoking or suspending Smog Check Test Only Station License Number TC 236899,
28 issued to Another Smog Test Only Center;

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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 Another Smog Test Only Center;
- 5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 138504, issued to Richard Daniel Fenton;
- 6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Richard Daniel Fenton;
- 7. Ordering Another Smog Test Only Center and Richard Daniel Fenton 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: January 16, 2013 John Wallauch by Doug Balatti
 JOHN WALLAUCH
 Chief
 Bureau of Automotive Repair
 Department of Consumer Affairs
 State of California
 Complainant

SF2012402441/ accusation.rtf