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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 Petition to Revoke
13 Probation Against

Case No. 79/16-28

14 **RICHARD DANIEL FENTON**
2360 Mendocino Avenue A2 #173
15 Santa Rosa, CA 95403

PETITION TO REVOKE PROBATION

16 **Smog Check Inspector License No.**
EO138504
17 **Smog Check Repair Technician License No.**
EI138504

18 Respondent.

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20 Complainant alleges:

21 **PARTIES**

22 1. Patrick Dorais (Complainant) brings this Petition to Revoke Probation solely in his
23 official capacity as the Chief of the Bureau of Automotive Repair (BAR), Department of
24 Consumer Affairs.

25 2. In or about 1998, the BAR issued Advanced Emission Specialist (EA) Technician
26 License No. 138504 to Richard Denton Fenton (Respondent). That License was due to expire on
27 February 28, 2014, but it was cancelled on February 20, 2014, when Respondent elected to be
28 instead licensed as a Smog Check Inspector (EO), License No. 138504, effective February 20,

1 2014, and a Smog Check Repair Technician (EI), License No. 138504, effective March 20, 2015.
2 The Smog Check Inspector License and Smog Check Repair Technician License were in effect at
3 all times relevant to the charges brought in this Petition to Revoke Probation and will expire on
4 February 29, 2016, unless renewed.

5 **JURISDICTION**

6 3. This Petition to Revoke Probation is brought before the Director of the Department of
7 Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the
8 following laws.

9 4. Section 9884.7 of the Business and Professions Code states:

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

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

18 ...

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

21 ..."

22 5. Section 118, subdivision (b), of the Business and Professions Code provides that the
23 suspension or expiration of a license shall not deprive the Director of jurisdiction to proceed with
24 a disciplinary action during the period within which the license may be renewed, restored,
25 reissued or reinstated.

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STATUTORY PROVISIONS

6. Section 44012 of the Health and Safety Code states:

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

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department

1 determines it to be necessary to meet the findings of Section 44001. The visual or functional
2 check shall be performed in accordance with procedures prescribed by the department.

3 (g) A determination as to whether the motor vehicle complies with the emission standards
4 for that vehicle's class and model-year as prescribed by the department.

5 (h) The test procedures may authorize smog check stations to refuse the testing of a vehicle
6 that would be unsafe to test, or that cannot physically be inspected, as specified by the department
7 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the
8 vehicle from compliance with all applicable requirements of this chapter."

9 7. Section 44032 of the Health and Safety Code states:

10 "No person shall perform, for compensation, tests or repairs of emission control devices or
11 systems of motor vehicles required by this chapter unless the person performing the test or repair
12 is a qualified smog check technician and the test or repair is performed at a licensed smog check
13 station. Qualified technicians shall perform tests of emission control devices and systems in
14 accordance with Section 44012."

15 8. Section 44059 of the Health and Safety Code states:

16 "The willful making of any false statement or entry with regard to a material matter in any
17 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
18 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
19 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

20 9. Section 44072.2 of the Health and Safety Code states:

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

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

27 "(b) Is convicted of any crime substantially related to the qualifications, functions, and
28 duties of the licenseholder in question.

- 1 "(c) Violates any of the regulations adopted by the director pursuant to this chapter.
- 2 "(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.
- 3 "(e) Has misrepresented a material fact in obtaining a license.
- 4 "(f) Aids or abets unlicensed persons to evade the provisions of this chapter.
- 5 "(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to
- 6 have those records available for inspection by the director or his or her duly authorized
- 7 representative for a period of not less than three years after completion of any transaction to
- 8 which the records refer, or refuses to comply with a written request of the director to make the
- 9 records available for inspection.
- 10 "(h) Violates or attempts to violate the provisions of this chapter relating to the particular
- 11 activity for which he or she is licensed."

REGULATORY PROVISIONS

12 10. Section 9889.22 of the Business and Professions Code states:

13 "The willful making of any false statement or entry with regard to a material matter in any

14 oath, affidavit, certificate of compliance or noncompliance, or application form which is required

15 by this chapter [the Automotive Repair Act] or Chapter 5 (commencing with Section 44000) of

16 Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as

17 provided in the Penal Code."

FACTUAL BACKGROUND

18 11. On or about January 7, 2011, Accusation 79/11-51 was filed against Respondent. It

19 alleged that Respondent fraudulently issued a Smog Certificate of Compliance to a BAR

20 undercover vehicle. On or about December 30, 2011, the Director of Consumer Affairs for the

21 Bureau of Automotive Repair, issued a decision, effective February 6, 2012. Included in this

22 decision was a disciplinary order revoking Respondent's Advanced Emission Specialist license.

23 However, the revocation was stayed and Respondent's Advanced Emission Specialist license

24 was placed on a four year probation. The terms and condition of probation included complying

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1 with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.
2 A failure to comply with the terms and condition of probation would result in permanent
3 revocation of Respondent's Advanced Emission Specialist license. On or about February 27,
4 2012, the Bureau conducted a Probation Conference with Respondent to discuss the methods by
5 which he planned to achieve and maintain compliance with the terms and conditions of probation.

6 12. On or about January 16, 2013, Accusation 79/13-41 was filed against Respondent. It
7 alleged that Respondent violated his probation by fraudulently issuing a Smog Certificate of
8 Compliance to a BAR undercover vehicle. On or about October 16, 2013, the Director of
9 Consumer Affairs for the Bureau of Automotive Repair, issued a decision, effective November 7,
10 2013. Included in this decision was a disciplinary order revoking Respondent's Advanced
11 Emission Specialist license. However, the revocation was stayed and Respondent's Advanced
12 Emission Specialist license was placed on an additional two years probation. The terms and
13 condition of probation included complying with all statues, regulations, and rules governing
14 automotive inspections, estimates, and repairs. A failure to comply with the terms and condition
15 of probation would result in permanent revocation of Respondent's Advanced Emission Specialist
16 license. On or about November 12, 2013, the Bureau conducted a Probation Conference with
17 Respondent to discuss the methods by which he planned to achieve and maintain compliance with
18 the terms and conditions of probation.

19 **FIRST CAUSE TO REVOKE PROBATION**
20 **(Failure to Obey All Laws)**

21 13. At all times after the effective date of Respondent's probation, Condition 1 of
22 Stipulated Settlement and Disciplinary Order 79/13-41 stated:

23 "1. **Obey All Laws.** Comply with all statutes, regulations and rules governing
24 automotive inspections, estimates and repairs."

25 14. Respondent's probation is subject to revocation because he failed to comply with
26 Probation Condition 1, referenced above, by not obeying all laws, as more specifically explained
27 in paragraph 13, above. The facts and circumstances regarding this violation are as follows:
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2. Revoking or suspending Smog Check Repair Technician License No. EI138504 issued to Richard Daniel Fenton;

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

DATED: 9/21/15

Patrick Doraïs by Doug Balatt
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
DOUG BALATT

SF2015900415