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

12 In the Matter of the Accusation Against:

Case No. 79/15-69

13 **JOSH MARK O'CONNELL**
14 **121 Olive Ct.**
Lodi, CA 95205

ACCUSATION

(SMOG CHECK)

15 **Smog Check Inspector License No. EO**
16 **155202 (formerly Advanced Emissions**
17 **Specialist Technician No. EA 155202)**

18 Respondent.

19 Patrick Dorais ("Complainant") alleges:

20 **PARTIES**

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

23 2. In 2008, the Bureau issued Advanced Emission Specialist Technician License
24 Number EA 155202 to Josh Mark O'Connell ("Respondent"). Respondent's license expired on
25 November 30, 2013. The license was renewed on December 4, 2013, pursuant to California Code
26 of Regulations, title 16, section 3340.28, subdivision (e), upon Respondent's election as a Smog
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1 Check Inspector (EO) License No. 155202¹. The license will expire on November 30, 2015,
2 unless renewed.

3 **STATUTORY PROVISIONS**

4 3. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
5 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
6 the Motor Vehicle Inspection Program.

7 4. Section 44050 of the Health and Safety Code states, in pertinent part:

8 (a) In addition to or in lieu of any other remedy or penalty, including, but
9 not limited to, education, training, or an office conference, the department may issue
10 a citation to a licensee, contractor, or fleet owner for a violation of the requirements
11 of this chapter or a regulation adopted pursuant to this chapter. The citation may
12 contain an order of abatement or the assessment of an administrative fine, or both.

13 (e) Failure to comply with an order of abatement or payment of an
14 administrative fine issued by the department pursuant to this section is grounds for
15 suspension or revocation of the license, or placing the license on probation.

16 5. Section 44055 of the Health and Safety Code, subdivision (b) states:

17 (b) The department may deny an application for the renewal of a test
18 station or repair station license if the applicant, or any partner, officer, or director
19 thereof, has failed to pay any civil penalty or administrative fine in accordance with
20 this article.

21 6. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
22 expiration or suspension of a license by operation of law, or by order or decision of the Director
23 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
24 the Director of jurisdiction to proceed with disciplinary action.

25 7. Section 44072.8 of the Health and Safety Code states:

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

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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 (EI) license.

1 **COST RECOVERY**

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

6 **CAUSE FOR DISCIPLINE**

7 **(Failure to Comply with Citation)**

8 9. Respondent is subject to discipline pursuant to Health and Safety Code section
9 44050(e), in that on or about April 8, 2013, the Bureau issued Citation No. M2013-0621 to
10 Respondent against his technician license for violating Health and Safety Code section 44032
11 (qualified technicians shall perform tests of emission control systems and devices in accordance
12 with section 44012 of that Code). On or about May 8, 2013, the Bureau served Respondent with
13 the Citation. The Bureau required that Respondent complete an 8-hour training course and pay a
14 \$500 fine or appeal the Citation within thirty (30) days of receipt of the Citation. Respondent did
15 not appeal the Citation, complete the required training, or pay the fine.

16 **OTHER MATTERS**

17 10. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
18 Number EO 155202, issued to Josh Mark O'Connell, is revoked or suspended, any additional
19 license issued under this chapter in the name of said licensee may be likewise revoked or
20 suspended by the director.

21 **PRAYER**

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

24 1. Revoking or suspending Smog Check Inspector License Number EO 155202, issued
25 to Josh Mark O'Connell;

26 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
27 and Safety Code in the name of Josh Mark O'Connell;

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3. Ordering Josh Mark O'Connell 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,

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

DATED: November 7, 2014 Patrick Dorais

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

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Revised Accusation.docx