

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

In the Matter of the Accusation Against:

JOSH MARK O'CONNELL
121 Olive Ct.
Lodi, CA 95205
Smog Check Inspector No. EO 155202

Respondent.

Case No. 79/15-69

OAH No. 2015080296

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 February 9, 2016.

DATED: January 11, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
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2 KENT D. HARRIS
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8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

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11 In the Matter of the Accusation Against:

Case No. 79/15-69

12 **JOSH MARK O'CONNELL**
121 Olive Ct.
13 Lodi, CA 95205
Smog Check Inspector No. EO 155202

OAH No. 2015080296

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14
15 Respondent.

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17 ~~IT IS HEREBY STIPULATED AND AGREED~~ by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
21 brought this action solely in his official capacity and is represented in this matter by Kamala D.
22 Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney
23 General.

24 2. Respondent Josh Mark O'Connell ("Respondent") is representing himself in this
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about January 1, 2008, the Bureau of Automotive Repair issued Smog Check
27 Inspector License No. EO 155202 to Josh Mark O'Connell (Respondent). The Smog Check

1 Inspector License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 79/15-69 and will expire on November 30, 2015, unless renewed.

3 JURISDICTION

4 4. Accusation No. 79/15-69 was filed before the Director of Consumer Affairs
5 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on November 13, 2014. A Default Decision dated July 9, 2015, was vacated by
8 the Director on July 14, 2015, and Respondent granted a hearing on the Accusation. A copy of
9 Accusation No. 79/15-69 is attached as exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 79/15-69. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 79/15-69.

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1 9. Respondent agrees that his Smog Check Inspector License is subject to discipline and
2 he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order
3 below.

4 CONTINGENCY

5 10. This stipulation shall be subject to approval by the Director of the Department of
6 Consumer Affairs or the Director's designee. Respondent understands and agrees that counsel for
7 Complainant and the Bureau's staff may communicate directly with the Director and staff of the
8 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or
9 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
10 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director
11 considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and
12 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
13 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
14 shall not be disqualified from further action by having considered this matter.

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

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

24 13. In consideration of the foregoing admissions and stipulations, the parties agree that
25 the Director may, without further notice or formal proceeding, issue and enter the following
26 Disciplinary Order:
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DISCIPLINARY ORDER

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2 IT IS HEREBY ORDERED that Smog Check Inspector License No. EO 155202 issued to
3 Respondent Josh Mark O'Connell (Respondent) is revoked. However, the revocation is stayed
4 and Respondent is placed on probation for one (1) year on the following terms and conditions.

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

7
8 2. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
9 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
10 conspicuously displayed in a location open to and frequented by customers and shall remain
11 posted during the entire period of actual suspension.

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

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

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

23 6. **Jurisdiction.** If an accusation is filed against Respondent during the term of
24 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
25 until the final decision on the accusation, and the period of probation shall be extended until such
26 decision.
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Smog Check Inspector license. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: Sept 29 2015



JOSH MARK O'CONNELL, Respondent

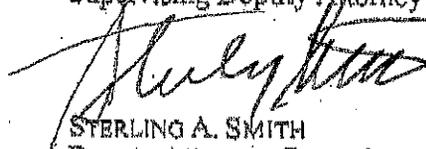
ENDORSEMENT

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

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General



STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

EXHIBIT A

Accusation No. 79/15-69

1 KAMALA D. HARRIS
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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:
13 **JOSH MARK O'CONNELL**
14 **121 Olive Ct.**
Lodi, CA 95205
15 **Smog Check Inspector License No. EO**
16 **155202 (formerly Advanced Emissions**
17 **Specialist Technician No. EA 155202)**
18 Respondent.

Case No. 79/15-69

ACCUSATION
(SMOG CHECK)

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
24 2. In 2008, the Bureau issued Advanced Emission Specialist Technician License
25 Number EA 155202 to Josh Mark O'Connell ("Respondent"). Respondent's license expired on
26 November 30, 2013. The license was renewed on December 4, 2013, pursuant to California Code
27 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

SA2014117639
Revised Accusation.docx