

1 ROB BONTA
Attorney General of California
2 ANDREW M. STEINHEIMER
Supervising Deputy Attorney General
3 SETH A. CURTIS
Deputy Attorney General
4 State Bar No. 236263
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6121
Facsimile: (916) 324-5567
7 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

Case No. 79/21-16377

14 **RADIY DUBINETSKY**
5608 Mariposa Ave.
15 Citrus Heights, CA 95610

ACCUSATION

16 **Smog Check Inspector License No. EO 632950**
Smog Check Repair Technician License
17 **No. EI 632950**

18 Respondent.

19
20 **PARTIES**

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

23 2. On or about March 23, 2011, the Bureau issued Advanced Emission Specialist
24 Technician License No. EA 932950 to Radiy Dubinetsky (Respondent). Pursuant to California
25 Code of Regulations, title 16 ("CCR"), section 3340.28, subdivision (e), upon Respondent's
26 election said license was renewed by the Bureau as Smog Check Inspector License Number
27 EO 632950, effective January 31, 2013; and, Smog Check Repair Technician License Number
28 EI 632950, effective February 20, 2013. The Smog Check Inspector and Smog Check Repair

1 Technician Licenses expired on January 31, 2021, and have not been renewed.

2 **JURISDICTION**

3 3. This Accusation is brought before the Director of the Department of Consumer
4 Affairs (Director) for the Bureau under the authority of the following laws.

5 4. Business and Professions Code (Code) section 9884.7 provides that the Director may
6 revoke an automotive repair dealer registration.

7 5. Code section 477 provides, in pertinent part, that “Board” includes “bureau,”
8 “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and
9 “agency.” “License” includes certificate, registration or other means to engage in a business or
10 profession regulated by the Code.

11 6. Health and Safety Code section 44002 provides, in pertinent part, that the Director
12 has all the powers and authority granted under the Automotive Repair Act for enforcing the
13 Motor Vehicle Inspection Program.

14 7. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration
15 or suspension of a license by operation of law, or by order or decision of the Director of
16 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
17 Director of jurisdiction to proceed with disciplinary action.

18 8. Health and Safety Code section 44072.8 states that when a license has been revoked
19 or suspended following a hearing under this article, any additional license issued under this
20 chapter in the name of the licensee may be likewise revoked or suspended by the Director.

21 **STATUTORY PROVISIONS**

22 9. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

27

28 ///

1 (c) Violates any of the regulations adopted by the director pursuant to this
2 chapter.

3 (d) Commits any act involving dishonesty, fraud, or deceit whereby another
4 is injured. . . .

5 10. Health and Safety Code section 44012, subdivision (a), states:

6 The test at the smog check stations shall be performed in accordance with
7 procedures prescribed by the department and may require loaded mode
8 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
9 vehicle's onboard diagnostic system, or other appropriate test procedures as
10 determined by the department in consultation with the state board. The department
11 shall implement testing using onboard diagnostic systems, in lieu of loaded mode
12 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles
13 only, beginning no earlier than January 1, 2013. However, the department, in
14 consultation with the state board, may prescribe alternative test procedures that
15 include loaded mode dynamometer or two-speed idle testing for vehicles with
16 onboard diagnostic systems that the department and the state board determine
17 exhibit operational problems. The department shall ensure, as appropriate to the
18 test method, the following:

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

22 11. Health and Safety Code section 44015, subdivision (b), states, "If a vehicle meets the
23 requirements of Section 44012, a smog check station licensed to issue certificates shall issue a
24 certificate of compliance or a certificate of noncompliance."

25 12. Health and Safety Code section 44072.10, subdivision (c), states, in pertinent part:

26 The department shall revoke the license of any smog check technician or
27 station licensee who fraudulently certifies vehicles or participates in the fraudulent
28 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
the following:

. . . .

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

13. Health and Safety Code section 44024.5, subdivision (a), states:

The department shall compile and maintain statistical and emissions profiles
and data from motor vehicles that are subject to the motor vehicle inspection
program. The department may use data from any source, including remote sensing
data, in use data, and other motor vehicle inspection program data, to develop and
confirm the validity of the profiles, to evaluate the program, and to assess the
performance of smog check stations. The department shall undertake these
requirements directly or seek a qualified vendor for these services.

///
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. Health and Safety Code section 44037 states, in pertinent part:

(a) The department shall compile and maintain records, using the sampling methodology necessary to ensure their scientific validity and reliability, of tests and repairs performed by qualified smog check technicians at licensed smog check stations pursuant to this chapter on all of the following information:

(1) The motor vehicle identification information and the test data collected at the station.

....

(5) Data received and compiled through the use of the centralized computer database and computer network to be established pursuant to Section 44037.1, and any other information determined to be essential by the department for program enhancement to achieve greater efficiency, consumer protection, cost-effectiveness, convenience, or emission reductions. . . .

15. Health and Safety Code section 44037.1 states, in pertinent part:

(a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer database and computer network that is readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer database and network shall be designed with all of the following capabilities:

....

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

....

(8) To be compatible with the department's recordkeeping and compilation requirements established by Section 44037.

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized database. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair. . . .

///
///
///

1 **REGULATORY PROVISIONS**

2 16. Title 16 California Code of Regulations (CCR) section 3340.17, subdivision (c),
3 states, “Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted
4 to the bureau's centralized database.”

5 17. CCR section 3340.30 states, in pertinent part:

6 A licensed smog check inspector and/or repair technician shall comply with the
7 following requirements at all times while licensed:

8 (a) Inspect, test and repair vehicles, as applicable, in accordance with section
9 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,
and section 3340.42 of this article. . . .

10 **COST RECOVERY**

11 18. Code section 125.3 provides, in pertinent part, that a Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case.

15 **UPDATED SMOG CHECK PROGRAM - ON BOARD DIAGNOSTIC SYSTEM**

16 19. On March 9, 2015, California’s Smog Check Program was updated to keep pace with
17 ever-advancing technology. The program update requires the use of an On-Board Diagnostic
18 Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of
19 the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and
20 most 1998 and newer diesel vehicles instead of the BAR-97 emission inspection system (EIS)
21 used for most model year 1999 and older gasoline and hybrid vehicles and 1997 and older diesel
22 vehicles. The BAR-OIS system consists of a certified Data Acquisition Device (DAD),
23 computer, bar code scanner, and printer.

24 20. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the
25 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
26 the BAR-OIS computer and the vehicle’s diagnostic link connector. The bar code scanner is used
27 to input technician information, the vehicle identification number, and DMV renewal
28 information. The vehicle identification number (VIN) that is physically present on all vehicles is

1 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on
2 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in
3 earlier model-years. The electronically programmed VIN, referred to as the “eVIN”, is captured
4 by the Bureau during a smog check inspection and should match the physical VIN on the vehicle.
5 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection
6 results and the Smog Check Certificate of Compliance Number for passing vehicles. Data
7 retrieved and recorded during an OIS smog check includes the eVIN, the communication
8 protocol,¹ and the number of Parameter Identifications (PIDs)².

9 21. As with the BAR-97 EIS, the technician also performs a visual and functional test on
10 the vehicle. The visual inspection of the emission control components verifies the required
11 emission control devices are present and properly connected and a functional test is performed of
12 the malfunction indicator light. The OIS software makes the determination whether or not the
13 vehicle passes the inspection based on the results of the OBD, visual, and functional tests.

14 **REVIEW OF OIS TEST DATA**

15 22. Bureau Representative D.D. reviewed BAR-OIS test data pertaining to smog check
16 inspections conducted by Respondent on the United States Postal Service's (Agency's)
17 Government Fleet vehicles at the Agency's facility at 2000 Royal Oaks Blvd., Sacramento,
18 California. D.D. found that Respondent performed smog check inspections at the facility on the
19 six vehicles identified below using a method known as “clean plugging”.³ Respondent certified
20 under penalty of perjury that he performed the inspections in accordance with all bureau

21 _____
22 ¹ The OBD II communication protocol describes the specific manufacturer/vehicle
23 communication “language” used by the OBD II computer to communicate to scan tools and other
24 devices such as the BAR-OIS. The communication protocol is programmed into the OBD II
25 computer during manufacture.

26 ² PIDs are data points reported by the OBD II computer to the scan tool or BAR-OIS (for
27 example, engine speed [rpm], vehicle speed, engine temperature, etc.) The PID count is the
28 number of data points reported by the OBD II computer and is programmed during manufacture.
Each make and model vehicle reports a specific number of PID counts.

³ Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another
source, to generate passing diagnostic readings for the purpose of fraudulently certifying that a
vehicle complies with the Smog Check Program when that vehicle is not, in fact, in compliance
with the Smog Check Program and/or is not present for testing.

1 requirements and that the information listed on the VIR was true and accurate.⁴ In fact,
2 Respondent did not perform the inspections in accordance with bureau requirements and the
3 information listed on the VIR was not true and accurate.

4 23. Expected OBD II values for the Agency's Ford Explorer Postal fleet vehicles for the
5 years 2000 and 2001 are as follows:

Vehicle Year	eVIN	CAL ID	PID Count
2000	Null	Null	20
2001	##### ⁵	[Numbers and characters can vary] ⁶	19

9
10 **Vehicle #1**

11 24. BAR-OIS test data showed that on January 18, 2020, Respondent performed a smog
12 check inspection on a 2000 Ford Explorer Postal, VIN ending in 9915 (Vehicle 1), and certified
13 that it passed inspection. The BAR-OIS test details for Vehicle 1 showed the eVIN as
14 #####, the CAL ID as PEAV8S3.HEX and the PID count as 19, which are not the
15 expected values for 2000 Ford Explorer Postal vehicles.

16 25. On or about October 28, 2020, a retest was performed on Vehicle 1 in the presence of
17 D.D. The eVIN and CAL ID were reported as null and the PID count was reported as 20, the
18 expected values for 2000 Ford Explorer Postal vehicles. An inspection of the repair records for
19 Vehicle 1 between January 18, 2020, and October 28, 2020, revealed that no repairs were made
20 that would affect the results of the October 28, 2020, retest.

21 26. D.D. concluded that the DAD was not connected to Vehicle 1 during the January 18,
22 2020, smog check inspection, and that the OIS was connected to a different vehicle or source to
23 fraudulently certify that Vehicle 1 passed a smog check inspection.

24 ///

25 ///

26 _____
27 ⁴ Government Fleet vehicles are not required to have a Smog Check certificate.

⁵ Beginning in 2001, the manufacturer implemented the use of hash marks for the eVIN.

28 ⁶ Beginning in 2001, the manufacturer implemented Calibration identification numbers (CAL ID) that identified the software installed on the engine control unit.

1 **Vehicle #2**

2 27. BAR-OIS test data showed that on January 18, 2020, Respondent performed a smog
3 check inspection on a 2000 Ford Explorer Postal, VIN ending in 6079 (Vehicle 2), and certified
4 that it passed inspection. The BAR-OIS test details for Vehicle 2 showed the eVIN as
5 #####, the CAL ID as PEA V8S3.HEX, and the PID count as 19, which are not the
6 expected values for 2000 Ford Explorer Postal vehicles.

7 28. On or about October 28, 2020, a retest was performed on Vehicle 2 and the eVIN and
8 CAL ID were reported as null and the PID count was reported as 20, the expected values for 2000
9 Ford Explorer Postal vehicles. An inspection of the repair records for Vehicle 2 between January
10 18, 2020, and October 28, 2020, revealed that no repairs were made that would affect the results
11 of the October 28, 2020, retest.

12 29. D.D. concluded that the DAD was not connected to Vehicle 2 during the January 18,
13 2020, smog check inspection, and that the OIS was connected to a different vehicle or source to
14 fraudulently certify that Vehicle 2 passed a smog check inspection.

15 **Vehicle #3**

16 30. BAR-OIS test data showed that on July 18, 2020, Respondent performed a smog
17 check inspection on a 2000 Ford Explorer Postal, VIN ending in 6499 (Vehicle 3), and certified
18 that it passed inspection. The BAR-OIS test details for Vehicle 3 showed the eVIN as
19 #####, the CAL ID as PEA V8S3.HEX, and the PID count as 19, which are not the
20 expected values for 2000 Ford Explorer Postal vehicles.

21 31. On or about October 28, 2020, a retest was performed on Vehicle 3 and the eVIN and
22 CAL ID were reported as null and the PID count was reported as 20, the expected values for 2000
23 Ford Explorer Postal vehicles. An inspection of the repair records for Vehicle 3 between July 18,
24 2020, and October 28, 2020, revealed that no repairs were made that would affect the results of
25 the October 28, 2020, retest.

26 32. D.D. concluded that the DAD was not connected to Vehicle 3 during the July 18,
27 2020, smog check inspection, and that the OIS was connected to a different vehicle or source to
28 fraudulently certify that Vehicle 3 passed a smog check inspection.

1 **Vehicle #4**

2 33. BAR-OIS test data showed that on August 17, 2019, Respondent performed a smog
3 check inspection on a 2001 Ford Explorer Postal, VIN ending in 2509 (Vehicle 4), and certified
4 that it passed inspection. The BAR-OIS test details for Vehicle 4 showed the eVIN and CAL ID
5 as null and the PID count as 20, which are not the expected values for 2001 Ford Explorer Postal
6 vehicles.

7 34. On or about October 28, 2020, a retest was performed on Vehicle 4 and the eVIN was
8 reported as #####, the CAL ID was reported as PEAV853.HEX, and the PID
9 count was reported as 19, the expected values for 2001 Ford Explorer Postal vehicles. An
10 inspection of the repair records for Vehicle 4 between August 17, 2019, and October 28, 2020,
11 revealed that no repairs were made that would affect the results of the October 28, 2020, retest.

12 35. D.D. concluded that the DAD was not connected to Vehicle 4 during the August 17,
13 2019, smog check inspection, and that the OIS was connected to a different vehicle or source to
14 fraudulently certify that Vehicle 4 passed a smog check inspection.

15 **Vehicle #5**

16 36. BAR-OIS test data showed that on July 18, 2020, Respondent performed a smog
17 check inspection on a 2001 Ford Explorer Postal, VIN ending in 7879 (Vehicle 5), and certified
18 that it passed inspection. The BAR-OIS test details for Vehicle 5 showed the eVIN and CAL ID
19 as null and the PID count as 20, which are not the expected values for 2001 Ford Explorer Postal
20 vehicles.

21 37. On or about October 28, 2020, a retest was performed on Vehicle 5 and the eVIN was
22 reported as #####, the CAL ID was reported as PEAV853.HEX, and the PID
23 count was reported as 19, the expected values for 2001 Ford Explorer Postal vehicles. An
24 inspection of the repair records for Vehicle 5 between July 18, 2020, and October 28, 2020,
25 revealed that no repairs were made that would affect the results of the October 28, 2020, retest.

26 38. D.D. concluded that the DAD was not connected to Vehicle 5 during the July 18,
27 2020, smog check inspection, and that the OIS was connected to a different vehicle or source to
28 fraudulently certify that Vehicle 5 passed a smog check inspection.

1 a. **CCR Section 3340.30, subdivision (a)**: Respondent failed to inspect and test
2 the vehicles in accordance with Health and Safety Code sections 44012 and 44035, and CCR
3 section 3340.42.

4 b. **CCR Section 3340.42**: Respondent failed to conduct the required smog tests
5 on the vehicles in accordance with the Bureau's specifications.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud, or Deceit – Smog Check Inspector and Smog Check Repair Technician**
8 **Licenses)**

9 44. Respondent's Smog Check Inspector and Smog Check Repair Technician Licenses
10 are subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in
11 conjunction with Health and Safety Code section 44072.10, subdivision (c), in that he committed
12 dishonest, fraudulent, or deceitful acts whereby another was injured by using false information for
13 electronic smog certificates of compliance issued for Vehicles 1 through 6, identified in
14 paragraphs 24 through 41, above, thereby failing to perform bona fide inspections of the emission
15 control devices and systems on the vehicles and depriving the people of the State of California of
16 the protection afforded by the Motor Vehicle Inspection Program.

17 **OTHER MATTERS**

18 45. Under Health and Safety Code section 44072.8, if Smog Check Inspector License No.
19 EO 632950, or Smog Check Repair Technician License No. EI 632950, issued to Radiy
20 Dubinetsky, is revoked or suspended, then any additional license issued under Chapter 5 of Part 5
21 of Division 26 of the Health and Safety Code in the name of Radiy Dubinetsky may be likewise
22 revoked or suspended by the Director.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Director of the Department of Consumer Affairs issue a
26 decision:

27 1. Revoking or suspending Smog Check Inspector License Number EO 632950, issued
28 to Radiy Dubinetsky;

- 1 2. Revoking or suspending Smog Check Repair Technician License Number EI 632950,
- 2 issued to Radiy Dubinetsky;
- 3 3. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
- 4 Division 26 of the Health and Safety Code in the name of Radiy Dubinetsky;
- 5 4. Ordering Radiy Dubinetsky to pay the Bureau of Automotive Repair the reasonable
- 6 costs of the investigation and enforcement of this case, pursuant to Business and Professions
- 7 Code section 125.3; and,
- 8 5. Taking such other and further action as deemed necessary and proper.
- 9
- 10
- 11

12 DATED: As of Digital Signature Date

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

16 SA2022300558
17 36020213.docx