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

11 In the Matter of the Accusation and Petition to Revoke
12 Probation Against:

Case Number: 79/21-13697

13 **ALI NADIR GUNGOR**
14 **940 Baines Street**
15 **East Palo Alto, CA 94303**

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

16 **Smog Check Inspector (EO) License No. EO 634506**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about July 18, 2002, the Director issued Advanced Emission Specialist
23 Technician License Number EA 634506 to Ali Nadir Gungor (Respondent). Respondent's
24 advanced emission specialist technician license was set to expire on July 31, 2014, but was
25 cancelled on April 16, 2014. Pursuant to California Code of Regulations, title 16, section
26 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog
27 Check Inspector License EO 634506.¹ Respondent's Smog Check Inspector License will expire
28 on July 31, 2022, unless renewed.

¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
(continued...)

1 In a disciplinary action titled "In the Matter of the Accusation Against Chevrem
2 Corporation, et al.," Case No. 79/17-1198, the Bureau of Automotive Repair issued a Decision
3 and Order effective May 4, 2021, in which Respondent's Smog Check Inspector License was
4 revoked. However, the revocation was stayed and Respondent's Smog Check Inspector License
5 was placed on probation for one (1) year with certain terms and conditions. A copy of that
6 Decision and Order is attached as Exhibit A and is incorporated by reference.

7 **JURISDICTION FOR ACCUSATION**

8 3. This Accusation is brought before the Director of the Department of Consumer
9 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

10 **STATUTORY AND REGULATORY PROVISIONS FOR ACCUSATION**

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

14 5. Section **44012** of the Health and Safety Code requires that tests at smog check
15 stations be performed in accordance with procedures prescribed by the department.

16 6. Section **44059** of the Health and Safety Code states, in pertinent part:

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

21 7. Section **44072.2** of the Health and Safety Code states, in pertinent part:

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

25
26
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

1 (a) Violates any section of this chapter and the regulations adopted pursuant to it, which
2 related to the licensed activities.

3 . . .

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

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

6 . . .

7 (h) Violates or attempts to violate the provisions of this chapter relating to the particular
8 activity for which he or she is licensed.

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

13 9. Section **44072.8** of the Health and Safety Code states:

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

17 10. Section **44072.10** of the Health and Safety Code states:

18 “. . . (c) The department shall revoke the license of any smog check technician or station
19 licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of
20 vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

21 “(1) Clean piping, as defined by the department.”

22 . . .

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

25 11. California Code of Regulations, title 16, section **3340.24**, states:

26 “. . . (c) The bureau may suspend or revoke the license of or pursue other legal action
27 against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of
28 compliance or a certificate of noncompliance. . .”

1 12. California Code of Regulations, title 16, section **3340.30**, states, in pertinent part:
2 A licensed smog check inspector and/or repair technician shall comply with the following
3 requirements at all times while licensed:
4 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
5 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
6 article.
7 . . .
8 13. California Code of Regulations, title 16, section **3340.41(c)**, states:
9 “No person shall enter into the BAR-97 Emissions Inspection System or the OBD
10 Inspection System any vehicle identification information or emission control system
11 identification data for any vehicle other than the one being tested. Nor shall any person
12 knowingly enter into the BAR-97 Emissions Inspection System or the OBD Inspection System
13 any false information about the vehicle being tested.”
14 14. California Code of Regulations, title 16, section **3340.42**, states:
15 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
16 section 3340.45.
17 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
18 methods:
19 . . .
20 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
21 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
22 The OBD test failure criteria are specified in section 3340.42.2.”
23 15. California Code of Regulations, title 16, section **3340.45**, states:
24 “(a) All Smog Check inspections shall be performed in accordance with requirements and
25 procedures prescribed in the following:
26 (1) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
27 manual became effective on or after January 1, 2013. This manual shall remain in effect until
28 subparagraph (2) is implemented.

1 “(2) Smog Check Manual, dated November 2, 2017, which is hereby incorporated by
2 reference. This manual shall become effective on August 2, 2018.”

3 **COSTS FOR ACCUSATION**

4 16. Section 125.3 of the Code provides, in pertinent part, that a Board (including the
5 Bureau of Automotive Repair) may request the administrative law judge to direct a licentiate
6 found to have committed a violation or violations of the licensing act to pay a sum not to exceed
7 the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate
8 to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of
9 investigation and enforcement costs may be included in a stipulated settlement.

10 **FACTUAL BACKGROUND**

11 17. In 2021, a Bureau Representative prepared a 2002 Dodge (Dodge) to fail a smog
12 inspection due to a defective Evaporative Emission Control Canister. The canister had a large
13 hole in it. In this condition the Dodge would not pass a properly performed smog inspection.
14 The Dodge would fail the visual portion of the smog inspection.

15 18. On or about October 19, 2021, an undercover operation was performed at Pleasant
16 Hill Star Smog to confirm compliance with the Smog Check Program. An operator drove to
17 Pleasant Hill Star Smog and requested a smog inspection.

18 19. Respondent performed the Smog Inspection on the 2002 Dodge, which passed the
19 smog inspection. The operator was given copies of an invoice and a Vehicle Inspection Report
20 (VIR). Smog Certificate of Compliance # SI227781C was issued for the Dodge. Respondent
21 entered "Pass" into the OIS for the Visual Inspection category "Fuel Evaporative System
22 (EVAP)," when in fact the vehicle should have failed. Respondent caused a certificate of
23 compliance to be issued to the Dodge. Respondent signed a vehicle inspection report that
24 indicated the Dodge was inspected in accordance with all Bureau requirements and passed the
25 fuel evaporative system visual inspection. That information was false.

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28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dishonest or Deceit)**

3 20. Respondent has subjected his Smog Check Inspector licenses to disciplinary action
4 under Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed
5 acts involving dishonesty or deceit whereby another was injured. The circumstances are
6 described in paragraphs 17-19, above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Violation of Laws and Regulations)**

9 21. Respondent has subjected his Smog Check Inspector license to disciplinary action
10 under Health and Safety Code section 44072.2, subdivision(s) (a), (c) and/or (g), in that
11 Respondent violated the following laws and regulations:

12 a. Respondent violated Health and Safety code section 44012, subdivision (f), in the
13 Respondent failed to perform a smog check on the Dodge according to the procedures prescribed
14 by the department. Respondent failed to perform a proper visual inspection.

15 b. Respondent violated Health and Safety code section 44015, subdivision (a)(1), in that
16 Respondent issued a certificate of compliance to a vehicle that had been tampered with.

17 c. Respondent violated health and Safety Code Section 44059 by willful making false
18 statements in issuing the Smog Certificate of compliance and on the Vehicle Inspection Reports.

19 d. Respondent violated California Code of Regulations, Title 16, section 3340.24,
20 subdivision (c), in that Respondent falsely issued a certificate of compliance to the Dodge.

21 e. Respondent violated California Code of Regulations, Title 16, section 3340.35,
22 subdivision (c), in that Respondent issued a certificate of compliance to a vehicle that did not
23 have all the required emission control equipment and devices installed and functioning correctly.

24 f. Respondent violated California Code of Regulations, Title 16, section 3340.42,
25 subdivision (b) in that Respondent failed to perform a proper visual inspection of the vehicle.

26 g. Respondent violated California Code of Regulations, Title 16, section 3340.42 in
27 conjunction with California Code of Regulations, Title 16, section 3340.45, subdivision (b), in
28

1 that Respondent failed to perform a proper visual inspection on the Honda as prescribed in the
2 Smog Check Manual.

3 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

4 22. This Petition to Revoke Probation is brought before the Director of the Department of
5 Consumer Affairs (Director) for the Bureau of Automotive Repair under Probation Term and
6 Condition Number 5 of the Decision and Order in the Matter of the Accusation Against Chevrem
7 Corporation, Et al., Case No. 79/17-1198. That term and condition states:

8 **Violation of Probation.** If Respondent violates or fails to comply with the terms and
9 conditions of probation in any respect, the Director, after giving notice and
10 opportunity to be heard may set aside the stay order and carry out the disciplinary
11 order provided in the decision. Once Respondent is served notice of BAR's intent to
12 set aside the stay, the Director shall maintain jurisdiction, and the period of probation
13 shall be extended until final resolution of the matter.

14 **CAUSE TO REVOKE PROBATION**

15 (Obey All Laws)

16 23. At all times after the effective date of Respondent's probation, Condition 1 stated:
17 “**Obey All Laws.** During the period of probation, Respondent shall comply with all federal and
18 state statutes, regulations and rules governing all BAR registrations and licenses held by
19 Respondent.”

20 24. Respondent's probation is subject to revocation because he failed to comply with
21 Probation Condition One, referenced above. Respondent violated numerous laws, regulations,
22 and rules governing the conduct of Smog Inspectors. The specific violations are described in the
23 causes for discipline in paragraphs 20 and 21, above.

24 **DISCIPLINARY CONSIDERATIONS**

25 25. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges that on or about May 4, 2021 a Program Representative conducted a
27 Probation Conference via telephone with Respondent. Respondent was warned that his probation
28 required him to comply with the Laws and Regulations contained within the Automotive Repair
Act, and that BAR may send undercover vehicles to confirm compliance with the Smog Check

1 Program. Respondent was further warned that failure to comply with applicable laws and
2 regulations may result in disciplinary action.

3 **OTHER MATTERS**

4 26. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Check
5 Inspector License is revoked or suspended, any additional license issued under Chapter 5 of Part
6 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
7 revoked or suspended by the director.

8 **PRAYER**

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

11 1. Revoking the probation that was granted by the Director in Case No. 79/17-1198 and
12 imposing the disciplinary order that was stayed thereby revoking Smog Check Inspector (EO)
13 License No. EO 634506 issued to Ali Nadir Gungor;

14 3. Revoking or suspending Smog Check Inspector (EO) License No. EO 634506
15 issued to Ali Nadir Gungor;

16 6. Revoking or suspending any additional Smog Check Station License, Smog Check
17 Inspector License, or Smog Check Repair Technician license, issued to Ali Nadir Gungor;

18 7. Ordering Ali Nadir Gungor to pay the Bureau of Automotive Repair the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3;

21 15. Taking such other and further action as deemed necessary and proper.

22
23 DATED: As of Digital Signature Date

24 PATRICK DORAIS
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant