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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. 79/19-17516

13 **DAVID FARDI**  
14 **480 N. Civic Dr. Apt. 106**  
15 **Walnut Creek, CA 94596**

**ACCUSATION**

16 **Smog Check Inspector License No. EO 640601,**  
17 Respondent.

18  
19 1. Patrick Dorais (Complainant) brings this accusation solely in his official capacity  
20 as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

21 2. On September 21, 2017, the Bureau issued Smog Check Inspector License No.  
22 EO 640601 to David Fardi (Respondent). This smog check inspector license was in full force and  
23 effect at all times relevant to the charges brought in this accusation and will expire on March 31,  
24 2021, unless renewed.

25 **JURISDICTION**

26 3. This accusation is brought before the Director of the Department of Consumer  
27 Affairs for the Bureau under the authority of the following laws.

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1           4.       Health and Safety Code section 44002 states:

2           “The department shall have the sole and exclusive authority within the state for  
3       developing and implementing the motor vehicle inspection program in accordance with this  
4       chapter.

5           “For the purposes of administration and enforcement of this chapter, the department, and  
6       the director and officers and employees thereof, shall have all the powers and authority granted  
7       under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475)  
8       and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions  
9       Code and under Chapter 33 (commencing with Section 3300) of Title 16 of the California Code  
10      of Regulations. Inspections and repairs performed pursuant to this chapter, in addition to meeting  
11      the specific requirements imposed by this chapter, shall also comply with all requirements  
12      imposed pursuant to Division 1 (commencing with Section 1) and Division 1.5 (commencing  
13      with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the  
14      Business and Professions Code and Chapter 33 (commencing with Section 3300) of Title 16 of  
15      the California Code of Regulations.”

16          5.       Health and Safety Code section 44072 states:

17          “Any license issued under this chapter and the regulations adopted pursuant to it may be  
18      suspended or revoked by the director. The director may refuse to issue a license to any applicant  
19      for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted  
20      in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2  
21      of the Government Code, and the director shall have all the powers granted therein.”

22          6.       Health and Safety Code section 44072.6 states:

23          “The expiration or suspension of a license by operation of law or by order or decision of  
24      the director or a court of law, or the voluntary surrender of a license by a licensee shall not  
25      deprive the director of jurisdiction to proceed with any investigation of, or action or disciplinary  
26      proceedings against, the licensee, or to render a decision suspending or revoking the license.”

27                               **STATUTORY AND REGULATORY PROVISIONS**

28          7.       Health and Safety Code section 44012 states in part:

1           “The test at the smog check stations shall be performed in accordance with procedures  
2 prescribed by the department and may require loaded mode dynamometer testing in enhanced  
3 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other  
4 appropriate test procedures as determined by the department in consultation with the state  
5 board. . . . The department shall ensure, as appropriate to the test method, the following:

6           . . .

7           “(f) A visual or functional check is made of emission control devices specified by the  
8 department, including the catalytic converter in those instances in which the department  
9 determines it to be necessary to meet the findings of Section 44001. The visual or functional  
10 check shall be performed in accordance with procedures prescribed by the department.”

11           8.       Health and Safety Code section 44032 states in part:

12           “Qualified technicians shall perform tests of emission control devices and systems in  
13 accordance with Section 44012.”

14           9.       Health and Safety Code section 44059 states:

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

19           10.      Health and Safety Code section 44072.2 states in part:

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

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

25           . . .

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

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

28           . . .

1 “(h) Violates or attempts to violate the provisions of this chapter relating to the particular  
2 activity for which he or she is licensed.”

3 11. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

4 “The Bureau may suspend or revoke the license of or pursue other legal action against a  
5 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
6 certificate of noncompliance.”

7 12. California Code of Regulations, title 16, section 3340.30, states in part:

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

10 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of  
11 the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of  
12 this article.”

13 13. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

14 “No person shall enter into the emissions inspection system any vehicle identification  
15 information or emission control system identification data for any vehicle other than the one  
16 being tested. Nor shall any person knowingly enter into the emissions inspection system any  
17 false information about the vehicle being tested.”

18 14. California Code of Regulations, title 16, section 3340.42, states in part:

19 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced  
20 by section 3340.45.

21 “(a) All vehicles subject to a smog check inspection, shall receive one of the following  
22 test methods:

23 . . .

24 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered  
25 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.”

26 15. California Code of Regulations, title 16, section 3340.45, subdivision (a), states in  
27 part:

28 “All Smog Check inspections shall be performed in accordance with requirements and

procedures prescribed.”

16. California Code of Regulations, title 16, section 3373, states:

“No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.”

### **COST RECOVERY**

17. Business and Professions Code section 125.3, subdivision (a), states:

“Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceedings, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

### **FACTUAL ALLEGATIONS**

18. From June 4 to June 6, 2019, a Bureau representative modified a 1990 Pontiac by installing a functionally inoperative exhaust gas recirculation (EGR) valve and EGR valve blockage plate on the vehicle. The defective valve and blockage plate would cause the vehicle to fail the functional portion of a smog check inspection. The representative installed a tamper indicator on the defective EGR valve which would be broken if a technician removed or replaced the valve or plate.

19. On October 2, 2019, a Bureau operator drove the Pontiac to a smog station and asked Respondent for a smog inspection. After the inspection, the operator received a vehicle inspection report signed by Respondent showing that the Pontiac had passed the smog inspection. Respondent entered N/A as the result for “Functional EGR.”

20. The representative reexamined the Pontiac. The defective valve and blockage plate were still installed on the vehicle. The tamper indicator was intact.

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1 **CAUSES FOR DISCIPLINE**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Fraud)**

4 21. Respondent has subjected his smog check inspector license to discipline for fraud  
5 (Health & Saf. Code, § 44072.2, subd. (d)). The facts are set forth in paragraphs 18-20 above.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Violation of Statutes and Regulations)**

8 22. Respondent has subjected his smog check inspector license to discipline for  
9 violating the Health and Safety Code, and regulations adopted by the Bureau (Health & Saf.  
10 Code, § 44072.2, subds. (a), (c), (d) & (h)). The facts are set forth in paragraphs 18-20 above.

11 a. Respondent committed perjury (Health & Saf. Code, § 44059).

12 b. Respondent did not perform the functional portion of smog tests in  
13 accordance with department procedures (Health & Saf. Code, § 44012, subd (f)).

14 c. Respondent did not perform tests of emission control devices and systems  
15 (Health & Saf. Code, § 44032).

16 d. Respondent issued a false and fraudulent smog certificate of compliance  
17 (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)).

18 e. Respondent did not perform a smog test in accordance with statutes and  
19 department procedures (Cal. Code Regs., tit. 16, § 3340.30, subd. (a)).

20 f. Respondent entered false information and data into the emission inspection  
21 system (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)).

22 g. Respondent did not perform onboard diagnostic tests on a vehicle that he  
23 certified that he smog checked (Cal. Code Regs., tit. 16, § 3340.42, subd. (a)(3)).

24 h. Respondent did not perform a smog test in accordance with department  
25 procedures (Cal. Code Regs., tit. 16, § 3340.45, subd. (a)).

26 i. Respondent made false statements or misleading statements on a record  
27 (Cal. Code Regs., tit. 16, § 3373).

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1 **OTHER MATTERS**

2 23. Under Health & Safety Code section 44072.8, if Respondent's smog check  
3 inspector license is revoked or suspended, any additional license issued under division 26, chapter  
4 5, part 5 of the Health and Safety Code in the name of the licensee also may be revoked or  
5 suspended by the Director.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
8 accusation, and that following the hearing, the Director issues a decision:

- 9 1. Revoking or suspending Smog Check Inspector License No. EO 640601 issued to  
10 Respondent;
- 11 2. Revoking or suspending any additional license issued to Respondent under  
12 division 26, part 5, chapter 5 of the Health and Safety Code;
- 13 3. Ordering Respondent to pay the Bureau the reasonable costs of the investigation  
14 and enforcement of this case under Business and Professions Code section 125.3; and
- 15 4. Taking such other and further action as deemed necessary and proper.

16 DATED: February 12, 2020

Signature on File

PATRICK DORAIS

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

*Complainant*

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