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8
9 **BEFORE THE**
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. *19/14-30*

13 **A 1 SMOG**
14 **MICHAEL KOKKONEN, OWNER**
6630 Rosedale Hwy, #C
15 Bakersfield, CA 93308
Automotive Repair Dealer Reg. No. ARD 241852
16 Smog Check Test Only Station License No. TC
241852,

ACCUSATION
(Smog Check)

18 **MICHAEL KOKKONEN**
107 Moneta Avenue
19 Bakersfield, Ca. 93308
Advanced Emission Specialist Technician
20 License No. EA 144223, (to be redesignated upon
21 renewal as EO 144223 and/or EI 144223)

22 Respondents.

23
24 Complainant alleges:

25 **PARTIES/LICENSE INFORMATION**

26 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
27 as the Acting Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
28 Affairs.

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

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

7

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

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

12

13 (f) Aids or abets unlicensed persons to evade the provisions of this
14 chapter . . .

15 13. Health & Saf. Code section 44072.10 states, in pertinent part:

16

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

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

22

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

25 14. Health & Saf. Code section 44072.8 states that when a license has been revoked or
26 suspended following a hearing under this article, any additional license issued under this chapter
27 in the name of the licensee may be likewise revoked or suspended by the director.

28 **REGULATORY PROVISIONS**

15. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),
states:

UNDERCOVER OPERATION-JANUARY 17, 2012

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2 22. On or about January 17, 2012, an undercover operator with the Bureau (hereinafter
3 “operator”) took the Bureau’s 2000 Mazda to Respondent’s facility. The OBDII² communication
4 wire had been previously disconnected on the Bureau-documented vehicle, causing the vehicle to
5 fail the California Smog Check Vehicle Inspection due the vehicle’s inability to communicate
6 with a generic OBDII code reader scanner³. The operator met with Respondent and requested a
7 smog inspection. The operator signed an estimate and was provided with a copy. After the
8 inspection was complete, the operator paid \$58.00 and received a copy of a vehicle inspection
9 report (“VIR”), indicating that the vehicle passed the inspection and a final invoice.

10 23. The VIR provided by Respondent and the Bureau’s VID (vehicle information
11 database) data showed that on January 17, 2012, between 15:14 and 15:40 hours, Respondent
12 performed a smog inspection on the vehicle, resulting in the issuance of electronic smog
13 certificate of compliance No. [REDACTED]. The BAR 97 OBDII test summary for this test shows
14 that the undercover vehicle communicated with the BAR 87 Emissions Inspection System⁴
15 (“EIS”) when the vehicle’s OBDII system was rendered inoperable and unable to communicate.

16 24. On or about March 5, 2012, the Bureau re-inspected the undercover vehicle and
17 found that the OBDII system on the vehicle continued to be disabled not allowing it to
18 communicate with the EIS. Further inspection confirmed that the DLC communication wire and
19 the Powertrain Control Module (PCM) wiring harness tamper indicators were still in place
20 indicating that the DLC communication wire tampering did not occur. On this same date, the
21 Bureau performed a smog inspection on the undercover vehicle which failed due to OBDII

22 ² The On Board Diagnostics (OBD II) functional test is an automated function of the
23 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
24 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
25 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
26 information from the vehicle’s on-board computer about the status of the readiness indicators,
27 trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
28 functional test, it will fail the overall inspection.

³ If the vehicle’s on board computer fails to communicate with the BAR 97 emission
analyzer, then the BAR 97 emission analyzer automatically fails the vehicle’s smog test.

⁴ The EIS is a computer based analyzer that samples a vehicle’s exhaust emissions
through an exhaust sample probe that is placed in the tailpipe of the vehicle being inspected.

1 communication failure. The Bureau's surveillance video showed that Kokkonen performed the
2 smog inspection on this vehicle using a different vehicle(s) during the OBD II test, a method
3 known as "clean plugging",⁵ resulting in the issuance of a fraudulent certificate of compliance for
4 this vehicle.

5 **VIDEO SURVEILLANCE-CLEAN-PIPING/CLEAN-PLUGGING**

6 25. In and between September 13, 2012 and October 10, 2012, representatives of the
7 Bureau conducted a video surveillance operation of Respondent Kokkonen's smog check facility.
8 The surveillance video and information obtained from the Bureau's vehicle information database
9 ("VID") showed that Respondent Kokkonen employed a method commonly known as clean
10 piping⁶ during the following smog inspections, resulting in the issuance of fraudulent certificates
11 of compliance for all of the following vehicles:

Date & Time of Inspection	Vehicle in EIS Data and License or VIN No.	Vehicle Actually Tested	Certificate No.
1. 9/22/2012 7:45-8:04	1999 Pontiac Grand Prix, License #5VOF542	2003 Toyota Corolla, License #5DSX250	XL556880C
2. 10/4/2012 19:12-19:29	1996 Bounder Motor Home, License # 3RXY074	2003 Toyota Corolla, License #5DSX250	XL888797C
3. 10/8/2012 19:12-19:29	2006 Chrysler 300 License # SLLANAS	Ford Ranger	XN064906C

19 26. In addition, the Bureau representative found that on or about September 24, 2012, at
20 12:00 hours, Respondent started a smog test on a 2003 Ford F-250, California license plate #
21 8P59512. The test ended at 12:20 hours. Respondent issued certificate of compliance
22 #XL619551C for the vehicle. The Bureau's surveillance video showed that Kokkonen performed

23 _____
24 ⁵ Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
25 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
26 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

27 ⁶ Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),
28 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to
cause the EIS to issue a certificate of compliance for another vehicle.

1 the smog inspection on this vehicle using a different vehicle(s) during the OBD II test, a method
2 previously described above as "clean plugging", resulting in the issuance of a fraudulent
3 certificate of compliance for this vehicle.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 27. Respondent Kokkonen's registration is subject to disciplinary action pursuant to Bus.
7 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
8 statement which he knew or in the exercise of reasonable care should have known to be untrue or
9 misleading, as follows: Respondent Kokkonen, certified that all of the vehicles identified in
10 paragraphs 22-26 above had passed inspection and were in compliance with applicable laws and
11 regulations. In fact, Respondent Kokkonen used clean piping and/or clean plugging methods in
12 order to issue certificates for those vehicles and did not test or inspect the vehicles as required by
13 Health & Saf. Code section 44012.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 28. Respondent Kokkonen's registration is subject to disciplinary action pursuant to Bus.
17 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
18 constitutes fraud by issuing electronic certificates of compliance for all of the vehicles identified
19 above in paragraphs 22-26 without ensuring that a bona fide inspection was performed on the
20 emission control devices and systems on the vehicles, thereby depriving the People of the State of
21 California of the protection afforded by the Motor Vehicle Inspection Program.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Violations of the Motor Vehicle Inspection Program)**

24 29. Respondent Kokkonen's smog check station license is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
26 comply with provisions of that Code, as follows:

1 a. **Section 44012:** Respondent Kokkonen failed to ensure that emission control tests
2 were performed on the vehicles identified above in paragraphs 22-26 in accordance with
3 procedures prescribed by the department.

4 b. **Section 44015:** Respondent Kokkonen issued electronic certificates of compliance
5 for all of the vehicles identified above in paragraphs 22-26 without ensuring that the vehicles
6 were properly tested and inspected to determine if they were in compliance with Health & Saf.
7 Code section 44012.

8 **FOURTH CAUSE FOR DISCIPLINE**
9 **(Failure to Comply with Regulations Pursuant**
10 **to the Motor Vehicle Inspection Program)**

11 30. Respondent Kokkonen's smog check station license is subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
13 comply with provisions of California Code of Regulations, title 16, as follows:

14 a. **Section 3340.24, subdivision (c):** Respondent Kokkonen falsely or fraudulently
15 issued electronic smog certificates of compliance for all of the vehicles identified in paragraphs
16 22-26 above.

17 b. **Section 3340.35, subdivision (c):** Respondent Kokkonen issued electronic smog
18 certificates of compliance for all of the vehicles identified in paragraphs 22-26 above even though
19 the vehicles had not been inspected in accordance with section 3340.42.

20 c. **Section 3340.41, subdivision (c):** Respondent Kokkonen entered false information
21 into the EIS by entering vehicle identification information or emission control system
22 identification data for a vehicle other than the one being tested.

23 d. **Section 3340.42:** Respondent Kokkonen failed to ensure that the required smog tests
24 were conducted on the vehicles identified in paragraphs 22-26 above in accordance with the
25 Bureau's specifications.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit)**

3 31. Respondent Kokkonen's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
5 dishonest, fraudulent or deceitful act whereby another is injured by issuing electronic smog
6 certificates of compliance for all of the vehicles identified above in paragraphs 22-26 without
7 ensuring that a bona fide inspection was performed of the emission control devices and systems
8 on the vehicles, thereby depriving the People of the State of California of the protection afforded
9 by the Motor Vehicle Inspection Program.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Violations of the Motor Vehicle Inspection Program)**

12 32. Respondent Kokkonen's technician license is subject to disciplinary action pursuant
13 to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
14 provisions of that Code, as follows:

15 a. **Section 44012:** Respondent Kokkonen failed to perform the emission control tests on
16 the vehicles identified in paragraphs 22-26 above in accordance with procedures prescribed by the
17 department.

18 b. **Section 44059:** Respondent Kokkonen willfully made false entries in the EIS,
19 resulting in the issuance of fraudulent certificates of compliance for all of the vehicles identified
20 in paragraphs 22-26 above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Pursuant**
23 **to the Motor Vehicle Inspection Program)**

24 33. Respondent Kokkonen's technician license is subject to disciplinary action pursuant
25 to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
26 provisions of California Code of Regulations, title 16, as follows:

1 a. **Section 3340.24, subdivision (c):** Respondent Kokkonen falsely or fraudulently
2 issued electronic smog certificates of compliance for all of the vehicles identified in paragraphs
3 22-26 above.

4 b. **Section 3340.30, subdivision (a):** Respondent Kokkonen failed to inspect and test
5 the vehicles identified in paragraphs 22-26 above in accordance with Health & Saf. Code sections
6 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

7 c. **Section 3340.41, subdivision (c):** Respondent Kokkonen entered false information
8 into the EIS by entering vehicle identification information or emission control system
9 identification data for a vehicle other than the one being tested.

10 d. **Section 3340.42:** Respondent Kokkonen failed to conduct the required smog tests on
11 the vehicles identified in paragraphs 22-26 above in accordance with the Bureau's specifications.

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud or Deceit)**

14 34. Respondent Kokkonen's technician license is subject to disciplinary action pursuant
15 to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
16 dishonest, fraudulent or deceitful act whereby another is injured by issuing electronic smog
17 certificates of compliance for all of the vehicles identified in paragraphs 22-26 above without
18 performing a bona fide inspection of the emission control devices and systems on the vehicles,
19 thereby depriving the People of the State of California of the protection afforded by the Motor
20 Vehicle Inspection Program.

21 **MATTERS IN AGGRAVATION**

22 35. To determine the degree of discipline, if any, to be imposed on Respondent
23 Kokkonen, Complainant alleges as follows:

24 **A 1 Smog-Michael Kokkonen-Owner**

25 a. On or about March 14, 2008, the Bureau issued Citation No. C08-0794 against
26 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
27 determine that emission control devices and systems required by State and Federal law are
28 installed and functioning correctly in accordance with test procedures), and California Code of

1 Regulations, title 16, section (“Regulation”) 3340.35, subdivision (c) (issuing a certificate of
2 compliance to a vehicle that was improperly tested). Respondent had issued a certificate of
3 compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau assessed
4 civil penalties totaling \$500.00 against Respondent for the violations. Respondent complied with
5 the citation (paid the fine) on April 30, 2008.

6 b. On or about April 7, 2009, the Bureau issued Citation No. C09-1164 against
7 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
8 determine that emission control devices and systems required by State and Federal law are
9 installed and functioning correctly in accordance with test procedures), and California Code of
10 Regulations, title 16, section (“Regulation”) 3340.35, subdivision (c) (issuing a certificate of
11 compliance to a vehicle that was improperly tested). Respondent had issued a certificate of
12 compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau assessed
13 civil penalties totaling \$1000.00 against Respondent for the violations. Respondent complied
14 with the citation on May 27, 2009.

15 **Michael Kokkonen-technician**

16 c. On or about December 4, 2003, the Bureau issued Citation No. M04-0299 against
17 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
18 perform tests of emission control systems and devices in accordance with Health & Saf. Code
19 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
20 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
21 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
22 vehicle with a missing PCV valve and hose. Respondent was directed to complete an 8 hour
23 training course and to submit proof of completion to the Bureau within 30 days from receipt of
24 the citation. Respondent complied with the citation (completed the required training) on January
25 11, 2004.

26 d. On or about March 14, 2008, the Bureau issued Citation No. M08-0795 against
27 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
28 perform tests of emission control systems and devices in accordance with Health & Saf. Code

1 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
2 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
3 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
4 vehicle with a missing PCV system. Respondent was directed to complete an 8 hour training
5 course and to submit proof of completion to the Bureau within 30 days from receipt of the
6 citation. Respondent complied with the citation (completed the required training) on May 18,
7 2008.

8 e. On or about April 7, 2009, the Bureau issued Citation No. M09-1165 against
9 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
10 perform tests of emission control systems and devices in accordance with Health & Saf. Code
11 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
12 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
13 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
14 vehicle with a missing PCV system. Respondent was directed to complete a 16 hour training
15 course and to submit proof of completion to the Bureau within 30 days from receipt of the
16 citation. Respondent complied with the citation (completed the required training) on May 19,
17 2009.

18 **OTHER MATTERS**

19 36. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
20 suspend, revoke or place on probation the registration for all places of business operated in this
21 state by Respondent Michael Kokkonen, owner of A 1 Smog, upon a finding that Respondent has,
22 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
23 to an automotive repair dealer.

24 37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
25 License Number TC 241852, issued to Respondent Michael Kokkonen, owner of A 1 Smog, is
26 revoked or suspended, any additional license issued under this chapter in the name of said
27 licensee may be likewise revoked or suspended by the Director.

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1 38. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
2 Technician License Number EA 144223, (and upon timely renewal of the license, to be
3 redesignated as EO 144223 and/or EI 144223) issued to Respondent Michael Kokkonen, is
4 revoked or suspended, any additional license issued under this chapter in the name of said
5 licensee may be likewise revoked or suspended by the Director.

6 **PRAYER**

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

- 9 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
10 241852, issued to Michael Kokkonen, owner of A 1 Smog;
- 11 2. Revoking or suspending any other automotive repair dealer registration issued to
12 Michael Kokkonen;
- 13 3. Revoking or suspending Smog Check Test Only Station License Number TC 241852,
14 issued to Michael Kokkonen, owner of A 1 Smog;
- 15 4. Revoking or suspending Advanced Emission Specialist Technician License Number
16 EA 144223, (and upon timely renewal of the license, to be redesignated as EO 144223 and/or EI
17 144223) issued to Michael Kokkonen;
- 18 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
19 and Safety Code in the Michael Kokkonen;
- 20 6. Ordering Michael Kokkonen, individually, and as owner of A 1 Smog, to pay the
21 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
22 case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9-30-13

PAT DORAIS by Doug Palatti
PATRICK DORAIS
Acting Chief, Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

LA2013510217