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

12
13
14 In the Matter of the Accusation and Petition to
Revoke Probation Against:

15 **MAHMOUD A. KWARA, DBA XPRESS**
SMOG AND TEST ONLY
16 **4624 Telephone Road**
Ventura, CA 93003

17 **Mailing:**
18 **4234 Avenida Simi**
Simi Valley, CA 93063
19 **Automotive Repair Dealer Registration No.**
ARD 259932
20 **Smog Check, Test Only, Station License No.**
TC 259932,

21
22 Respondent.

Case No. 79/21-10711

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

23
24
25 **PARTIES**

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

1 (1) Making or authorizing in any manner or by any means whatever any statement written
2 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
3 care should be known, to be untrue or misleading.

4 . . .

5 (3) Failing or refusing to give to a customer a copy of any document requiring his or her
6 signature, as soon as the customer signs the document.

7 . . .

8 (6) Failure in any material respect to comply with the provisions of this chapter or
9 regulations adopted pursuant to it.”

10 9. Section 44012 of the Health and Safety Code states:

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

22 . . .

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

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28 ///

1 10. Section 44015 of the Health and Safety Code states, in pertinent part:

2 “. . .

3 (b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to
4 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.”

5 **REGULATORY PROVISIONS FOR ACCUSATION**

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

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

10 12. California Code of Regulations, title 16, section 3340.35, subdivision (c), states:

11 “. . .

12 (c) A licensed station shall issue a certificate of compliance or noncompliance to the owner
13 or operator of any vehicle that has been inspected in accordance with the procedures specified in
14 section 3340.42 of this article and has all the required emission control equipment and devices
15 installed and functioning correctly. The following conditions shall apply:

16 (1) Customers shall be charged the same price for certificates as that paid by the licensed
17 station; and

18 (2) Sales tax shall not be assessed on the price of certificates.”

19 13. California Code of Regulations, title 16, section 3340.42, states:

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

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

23 (1) A loaded-mode test shall be the test method used to inspect 1976 -
24 1999 model-year vehicle, except diesel-powered, registered in the enhanced program
25 areas of the state. The loaded-mode test shall measure hydrocarbon, carbon
26 monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the
bureau's specifications referenced in subsection (a) of Section 3340.17 of this article.
The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment,
including a chassis dynamometer, certified by the bureau.

27 On and after March 31, 2010, exhaust emissions from a vehicle subject to
28 this inspection shall be measured and compared to the emissions standards shown in
the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints)

1 Table, dated March 2010, which is hereby incorporated by reference. If the emissions
2 standards for a specific vehicle are not included in this table then the exhaust
3 emissions shall be compared to the emissions standards set forth in TABLE I or
4 TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured
5 emissions are less than or equal to the applicable emission standards specified in the
6 applicable table.

7 (2) A two-speed idle mode test shall be the test method used to inspect
8 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program
9 areas of the state, except in those areas of the state where the enhanced program has
10 been implemented. The two-speed idle mode test shall measure hydrocarbon, carbon
11 monoxide and carbon dioxide emissions at high RPM and again at idle RPM, as
12 contained in the bureau's specifications referenced in subsection (a) of Section
13 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
14 shall be measured and compared to the emission standards set forth in this section and
15 as shown in Table III. A vehicle passes the two-speed idle mode test if all of its
16 measured emissions are less than or equal to the applicable emissions standards
17 specified in Table III.

18 (3) An OBD-focused test, shall be the test method used to inspect
19 gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles
20 1998 model-year and newer. The OBD test failure criteria are specified in section
21 3340.42.2.

22 (b) In addition to subsection (a), all vehicles subject to the smog check
23 program shall receive the following:

24 (1) A visual inspection of emission control components and systems to
25 verify the vehicle's emission control systems are properly installed.

26 (2) A functional inspection of emission control systems as specified in the
27 Smog Check Manual, referenced by section 3340.45, which may include an OBD
28 test, to verify their proper operation.

(c) The bureau may require any combination of the inspection methods in
sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and
Safety Code section 44014.7 as a means of identifying potential operational problems
with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational
problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross
polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions
standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for
gross polluters during an initial inspection will be considered gross polluters and the

1 provisions pertaining to gross polluting vehicles will apply, including, but not limited
2 to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

3 (3) A gross polluting vehicle shall not be passed or issued a certificate of
4 compliance until the vehicle's emissions are reduced to or below the applicable
5 emissions standards for the vehicle included in the tables described in subsection (a),
6 as applicable. However, the provisions described in section 44017 of the Health and
7 Safety Code may apply.

8 (4) This subsection applies in all program areas statewide to vehicles
9 requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety
10 Code.

11 14. California Code of Regulations, title 16, section 3340.45:

12 “(a) All Smog Check inspections shall be performed in accordance with requirements and
13 procedures prescribed in the following:

14 (1) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
15 manual became effective on or after January 1, 2013. This manual shall remain in effect until
16 subparagraph (2) is implemented.

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

19 **COST RECOVERY FOR ACCUSATION**

20 15. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 **FACTUAL ALLEGATIONS**

25 16. On or about August 19, 2021, a Bureau representative documented a 2001 Dodge for
26 a documented vehicle operation to be conducted at Xpress Smog and Test Only. A Bureau
27 representative removed the vehicle's Evaporative (EVAP) canisters and photographed the area of
28 the missing EVAP canisters.

17. On or about August 19, 2021, an undercover operator drove the 2001 Dodge to
Respondent's station and requested a Smog Check inspection. The undercover operator signed an
estimate for \$65.00 but did not receive a copy until after the inspection was completed. After the
inspection, the undercover operator paid \$65.00 and was provided with the Vehicle Inspection

1 Report (VIR), an estimate, and an invoice. The vehicle was certified under the Smog Check
2 Inspector license of Kaden Maguglin as indicated by the OIS Test Detail and VIR from Bureau
3 records and was issued Certificate of Compliance Number SG038998C.

4 18. On or about August 26, 2021, a Bureau representative re-inspected the 2001 Dodge
5 and verified the EVAP canisters were still missing. The Bureau representative performed a BAR-
6 OIS inspection. The vehicle failed the inspection due to the missing EVAP canisters.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 19. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
11 authorized statements which Respondent knew or in the exercise of reasonable care should have
12 known to be untrue or misleading when Respondent issued certificate of compliance to the
13 undercover vehicle described in paragraphs 16 through 18 above, certifying the vehicle as being
14 in compliance with applicable laws and regulations when, in fact, the vehicle had not been
15 properly inspected. Respondent did not inspect the vehicle as required by Health & Saf. Code
16 section 44012. Complainant refers to, and by this reference incorporates, the allegations
17 contained in paragraphs 16 through 18, above, as though set forth fully herein.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Material Violation of Automotive Repair Act)**

20 20. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action
21 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a
22 material respect to comply with the provisions of this chapter or regulations adopted pursuant to it
23 when Respondent issued an electronic smog certificate of compliance for the undercover vehicle
24 described in paragraphs 16 through 18 above, without performing a bona fide inspection of the
25 emission control devices and systems on the vehicle, thereby depriving the People of the State of
26 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
27 refers to, and by this reference incorporates, the allegations contained in paragraphs 16 through
28 18, above, as though set forth fully herein.

1 a. **Section 3340.24, subdivision (c)**: Respondent falsely issued a certificate of
2 compliance without performing a bona fide inspection of the emission control devices and
3 systems on the undercover vehicle as required by Health & Saf. Code section 44012.

4 b. **Section 3340.35, subdivision (c)**: Respondent issued a certificate of compliance
5 even though the vehicle had not been inspected in accordance with section 3340.42 of the Health
6 & Saf. Code.

7 c. **Sections 3340.42 and 3340.45**: Respondent failed to conduct the required smog test
8 inspections on the undercover vehicle in accordance with the Bureau's specifications.

9 Complainant refers to, and by this reference incorporates, the allegations contained in
10 paragraphs 16 through 18 as though set forth fully herein.

11 **OTHER MATTERS**

12 23. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
13 suspend, revoke, or place on probation the registration for all places of business operated in this
14 state by Respondent Mahmoud A. Kwara, dba Xpress Smog and Test Only, upon a finding that he
15 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
16 pertaining to an automotive repair dealer.

17 24. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
18 License No. TC 259932, issued to Respondent Mahmoud A. Kwara, dba Xpress Smog and Test
19 Only, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division
20 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended
21 by the Director.

22 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

23 25. In a disciplinary action titled *In the Matter of the Accusation Against Xpress Smog*
24 *and Test Only – Mahmoud A. Kwara, Sole Owner*, Case No. 79/17-9157, the Bureau issued a
25 Decision and Order effective November 17, 2020, in which Respondent's Automotive Repair
26 Dealer Registration and Smog Check Station License were revoked. However, the revocations
27 were stayed and Respondent's Automotive Repair Dealer Registration and Smog Check Station
28

1 License were placed on probation for three (3) years with certain terms and conditions. A copy of
2 that Decision and Order is attached as Exhibit A and is incorporated herein by reference.

3 26. This Petition to Revoke Probation is brought before the Director for the Bureau of
4 Automotive Repair under Probation Term and Condition Number 1 of the Decision and Order *In*
5 *the Matter of the Accusation Against Xpress Smog and Test Only – Mahmoud A. Kwara, Sole*
6 *Owner*, Case No. 79/17-9157. That term and condition states:

7 “Obey All Laws. Respondent shall comply with all federal and state statutes, regulations
8 and rules governing all BAR registrations and licenses held by Respondent.”

9 **CAUSE TO REVOKE PROBATION**

10 **(Failure to Obey All Statutes, Regulations and Rules Governing Automotive Inspections,**
11 **Estimates and Repairs)**

12 27. At all times after the effective date of Respondent’s probation, Condition 1 stated:

13 “Obey All Laws. Respondent shall comply with all federal and state statutes, regulations
14 and rules governing all BAR registrations and licenses held by Respondent.”

15 28. Respondent’s probation is subject to revocation because he failed to comply with
16 Probation Condition 1, as described in Paragraphs 16 through 18, above.

17 **DISCIPLINE CONSIDERATIONS**

18 29. On or about November 17, 2020, pursuant to the terms and conditions of
19 Respondent’s probation, a Bureau representative conducted the initial Probation Conference with
20 Respondent to discuss the probation terms and conditions. One of the terms of probation required
21 Respondent to comply with all federal and state statutes, regulations and rules governing all BAR
22 registrations and licenses held by Respondent. Respondent was advised that following the
23 Probation Conference, the Bureau may audit repair records and/or send an undercover vehicle to
24 verify compliance with the Automotive Repair Act. Respondent was also advised on how to
25 comply with the terms and conditions of his probation.

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6. Ordering Mahmoud A. Kwara 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

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

DATED: As of Digital Signature Date

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

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