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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **M & M TEST ONLY** **CHARBEL ELKHOURY** **aka CHARBEL EL KHOURY, Owner** **6810 Hayvenhurst Avenue, #A** **Van Nuys, CA 91406** **Automotive Repair Dealer Registration No. ARD 229547** **Smog Check Test Only Station License No. TC 229547** **CHARBEL ELKHOURY** **aka CHARBEL EL KHOURY** **5623 Avenida Classica** **Palmdale, CA 93551** **Advanced Emission Specialist Technician No. EA 142229** Respondent.	Case No. 79/12-46 **ACCUSATION** SMOG CHECK

Sherry Mehl ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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Automotive Repair Dealer Registration

2. On or about October 13, 2004, the Bureau issued Automotive Repair Dealer Registration Number ARD 229547 ("registration") to Charbel El Khoury, also known as Charbel Elkhoury ("Respondent"), doing business as M & M Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

Smog Check Test Only Station License

3. On or about December 5, 2003, the Bureau issued Smog Check Test Only Station License Number TC 229547 ("station license") to Respondent doing business as M & M Test Only. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

Advanced Emission Specialist Technician License

4. In or about 2000, the Bureau issued Advanced Emission Specialist Technician License Number EA 142229 ("technician license") to Respondent. The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

STATUTORY PROVISIONS

5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
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> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
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> (4) Any other conduct which constitutes fraud.
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> (6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

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

8. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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10. Section 44072.8 of the Health and Safety Code states:

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

COST RECOVERY

11. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate 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.

UNDERCOVER OPERATION – SEPTEMBER 20, 2010

12. On or about September 20, 2010, a Bureau undercover operator ("operator") drove a Bureau-documented 1995 Ford Econoline-350 ("vehicle") to Respondent's facility and requested a smog inspection. The vehicle could not pass a smog inspection because the vehicle's air injection pump was missing. The operator signed a work order and received a copy. Respondent performed the smog inspection and issued electronic Certificate of Compliance No. NW570440, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle's air injection pump was missing.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

13. Respondent's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that on or about September 20, 2010, he made or authorized statements which he knew or in the exercise of reasonable care he should have known to be untrue or misleading by issuing electronic Certificate of Compliance No. NW570440 for the vehicle, certifying that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle's air injection pump was missing.

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SECOND CAUSE FOR DISCIPLINE

(Fraud)

14. Respondent's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that on or about September 20, 2010, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NW570440 for the vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

15. Respondent's station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about September 20, 2010, he failed to comply with the following sections of that Code:

a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of Compliance No. NW570440 for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

16. Respondent's station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about September 20, 2010, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

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a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of Compliance No. NW570440 for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

17. Respondent's station license is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about September 20, 2010, he committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate of Compliance No. NW570440 for the vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

18. Respondent's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on or about September 20, 2010, he violated the following sections of that Code:

a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the department.

c. **Section 44032:** Respondent failed to perform tests of the emission control devices and systems on the vehicle in accordance with section 44012 of that Code.

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SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

19. Respondent's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about September 20, 2010, he violated the following sections of the California Code of Regulations, title 16:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the vehicle in accordance with Health and Safety Code section 44012.

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS unit by entering "Pass" for the visual portion of the smog inspection when, in fact, the vehicle could not pass the visual portion of the inspection because the vehicle's air injection pump was missing.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about September 20, 2010, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NW570440 for that vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

PRIOR CITATIONS

21. To determine the degree of discipline, if any, Complainant alleges the following:

a. On or about February 28, 2008, the Bureau issued Citation No. C08-0728 against Respondent's registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section

3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle that was missing the positive crankcase ventilation system. The Bureau assessed civil penalties totaling $500 against Respondent for the violations. Respondent paid the Citation on June 2, 2008.

b. On or about May 20, 2008, the Bureau issued Citation No. C08-1028 against Respondent's registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover vehicle that was missing a fuel evaporative canister. The Bureau assessed civil penalties totaling $1000 against Respondent for the violations. On or about July 31, 2008, Respondent appealed the Citation. On or about August 4, 2009, a hearing was held regarding the appeal. On or about October 21, 2009, the Citation was affirmed. Respondent paid the Citation on February 1, 2010.

c. On or about October 21, 2008, the Bureau issued Citation No. C09-0394 against Respondent's registration and station licenses for violations of Health and Safety Code section 44012(f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), in that Respondent performed an improper inspection. The Bureau assessed civil penalties totaling $2,000 against Respondent for the violations. On or about December 24, 2008, Respondent appealed the Citation. On or about August 4, 2009, a hearing was held regarding the appeal. On or about October 21, 2009, the Citation was affirmed. Respondent paid the Citation on February 1, 2010.

d. On or about February 28, 2008, the Bureau issued Citation No. M08-0729 against Respondent's technician license for violations of Health and Safety Code section 44032 (failure to perform tests and inspections in accordance with Health and Safety Code section 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau

undercover vehicle with a missing positive crankcase ventilation system. Respondent was required to attend an 8-hour training course. On or about May 30, 2008, Respondent completed the required training course.

e. On or about May 30, 2008, the Bureau issued Citation No. M08-1029 against Respondent's technician license for violations of Health and Safety Code section 44032 (failure to perform tests and inspections in accordance with Health and Safety Code section 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau undercover vehicle that was missing a fuel evaporative canister. Respondent was required to take a 16-hour training course. On or about July 31, 2008, Respondent appealed the Citation. On or about August 4, 2009, a hearing was held regarding the appeal. On or about October 21, 2009, the Citation was affirmed. Respondent completed the training course on March 3, 2010.

f. On or about October 21, 2008, the Bureau issued Citation No. M09-0395 against Respondent's technician license for violations of Health and Safety Code section 44032 (failure to perform tests and inspections in accordance with Health and Safety Code section 44012), and California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42) in that Respondent performed an improper inspection. Respondent was required to take a 68-hour Clean Air Car training course. On or about December 24, 2008, Respondent appealed the Citation. On or about August 4, 2009, a hearing was held regarding the appeal. On or about October 21, 2009, the Citation was affirmed. Respondent completed the training course on February 12, 2010.

OTHER MATTERS

22. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by Charbel Elkhoury, also known as Charbel El Khoury, upon a finding that he has, or is, engaged in a course of

repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

23. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 229547, issued to Charbel Elkhoury, also known as Charbel El Khoury, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

24. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 142229, issued to Charbel Elkhoury, also known as Charbel El Khoury, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 229547, issued to Charbel Elkhoury, also known as Charbel El Khoury, doing business as M & M Test Only;

2. Revoking or suspending any other automotive repair dealer registration issued to Charbel Elkhoury, also known as Charbel El Khoury;

3. Revoking or suspending Smog Check Test Only Station License Number TC 229547, issued to Charbel Elkhoury, also known as Charbel El Khoury, doing business as M & M Test Only;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 142229, issued to Charbel Elkhoury, also known as Charbel El Khoury;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Charbel Elkhoury, also known as Charbel El Khoury;

6. Ordering Charbel Elkhoury, also known as Charbel El Khoury to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 10/11/11

Sherry Mehl by Doug Balatti

SHERRY MEHL DOUG BALATTI
Chief Assist. Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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