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

11 In the Matter of the Accusation Against:

Case No. *79/14-45*

12 **JOSE LUIS MANFREDY a.k.a. JOSE**
REFUGIO GUTIERREZ GARCIA

13 3326 W. 113th Street
14 Inglewood, CA 90303

ACCUSATION
Smog Check

15 **Advanced Emission Specialist Technician**
License No. EA 151871 (to be redesignated
16 **upon renewal as EO 151871 and/or EI**
151871)

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

23 2. On a date uncertain in 2005, the Bureau of Automotive Repair (Bureau) issued
24 Advanced Emission Specialist Technician License (Technician License) number EA 151871 in
25 the name of Jose Luis Manfredy. Technician License number EA 151871¹ expired on April 30,
26 2013, and has not been renewed.

27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced

(continued...)

1 JURISDICTION

2 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the
3 Bureau, under the authority of the following laws.

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

7 5. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration
8 or suspension of a license by operation of law, or by order or decision of the Director, or a court
9 of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
10 proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to
11 render a decision suspending or revoking the license.

12 6. Business and Professions Code section 118, subdivision (b), provides that the
13 suspension, expiration, surrender, or cancellation of a license shall not deprive a board of
14 jurisdiction to proceed with a disciplinary action during the period within which the license may
15 be renewed, restored, reissued or reinstated.

16 STATUTORY PROVISIONS

17 7. Business and Professions Code section 477 provides, in pertinent part, that "Board"
18 includes "bureau," "commission," "committee," "department," "division," "examining
19 committee," "program," and "agency." "License" includes certificate, registration or other means
20 to engage in a business or profession regulated by the code.

21 8. Business and Professions Code section 490 provides, in pertinent part, that a board
22 may suspend or revoke a license on the ground that the licensee has been convicted of a crime
23 substantially related to the qualifications, functions, or duties of the business or profession for
24 which the license was issued.

25 _____
26 (...continued)

27 Emission Specialist Technician (EA) license and Basic Area Technician (EB) license to Smog
28 Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license. As a result,
upon renewal of Technician License number EA 151871, the license will be re-designated as EO
151871 and/or EI 151871,

1 9. Business and Professions Code section 493 states:

2 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the
5 ground that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question.

11 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
12 ‘registration.’”

13 10. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

20 “(b) Is convicted of any crime substantially related to the qualifications, functions, and
21 duties of the licenseholder in question.

22 . . .

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

24 “(e) Has misrepresented a material fact in obtaining a license”

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1 11. Business and Professions Code section 9889.22 states:

2 "The willful making of any false statement or entry with regard to a material matter in any
3 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
4 by this chapter [the Automotive Repair Act] or Chapter 5 (commencing with Section 44000) of
5 Part 5 of Division 26 of the Health and Safety Code [the Motor Vehicle Inspection Program]
6 constitutes perjury and is punishable as provided in the Penal Code."

7 12. Health and Safety Code section 44059 states:

8 "The willful making of any false statement or entry with regard to a material matter in any
9 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
10 by this chapter [the Motor Vehicle Inspection Program] or Chapter 20.3 (commencing with
11 Section 9880) of Division 3 of the Business and Professions Code [the Automotive Repair Act],
12 constitutes perjury and is punishable as provided in the Penal Code."

13 **COST RECOVERY**

14 13. Business and Professions Code section 125.3 provides, in pertinent part, that the
15 Board may request the administrative law judge to direct a licentiate found to have committed a
16 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
17 investigation and enforcement of the case, with failure of the licentiate to comply subjecting the
18 license to not being renewed or reinstated. If a case settles, recovery of investigation and
19 enforcement costs may be included in a stipulated settlement.

20 **INVESTIGATION OF JOSE LUIS MANFREDY**
21 **a.k.a. JOSE REFUGIO GUTIERREZ GARCIA**

22 14. On or about August 7, 2012, the Bureau received an anonymous tip that Respondent
23 had used a false identity to obtain Technician License number EA 151871 and California Driver's
24 License (CDL) number D1775246 in the name of Jose Luis Manfredy. The tipster stated that
25 Respondent's actual name was Jose Refugio Gutierrez Garcia and faxed a photocopy of Garcia's
26 Passport and Mexican Matricula Consular identification card.

27 15. On or about August 14, 2012, the Bureau investigator requested a copy of
28 Respondent's smog technician license application; however, the application was not available due

1 to water damage. The Bureau investigator obtained a copy of Respondent's smog technician
2 license renewal application from 2011 as well as a certificate of course completion dated May 23,
3 2011 showing that Respondent completed the continuing education requirement.

4 16. The Bureau investigator contacted the Department of Motor Vehicles (DMV). A
5 DMV investigator stated that the DMV had received a similar tip and was investigating
6 Respondent for using a false identity.

7 17. On or about December 20, 2012, the Bureau investigator and two DMV investigators
8 went to 4770 Lincoln Blvd., Marina Del Rey, CA 90292 to inspect the location and attempt to
9 identify Respondent. Upon arriving at the location, the investigators were greeted by Respondent.
10 The Bureau investigator asked Respondent for his Smog Technician badge. Respondent
11 produced the fraudulently obtained license badge with his photo [Technician License number EA
12 151871], obtained under the name Jose Luis Manfredy. The Bureau investigator asked
13 Respondent for his driver's license and Respondent produced CDL number D1775246, under the
14 name Jose Luis Manfredy. A DMV investigator arrested Respondent at that time for false
15 personation.

16 18. On or about January 22, 2013, the Bureau investigator obtained a certified copy of the
17 electronic court docket showing that on January 2, 2013, Respondent was convicted of one felony
18 count of Penal Code section 529, subdivision (a)(3) [false personation] in Los Angeles Superior
19 Court case no. SA082802.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Substantially Related Conviction)**

22 19. Respondent is subject to disciplinary action under Business and Professions Code
23 section 490 and Health and Safety Code section 44072.2, subdivision (b), in that Respondent
24 committed a crime substantially related to the qualifications, functions, and duties of an advanced
25 emission specialist technician. On January 2, 2013, in a criminal proceeding entitled People v.
26 Jose Refugio Garcia (Super. Ct. Los Angeles County, 2012, No. SA082802), Respondent was
27 convicted of one felony count of false personation, a violation of Penal Code section 529,
28 subdivision (a)(3). The Court sentenced respondent to 90 days in county jail and placed him on

1 three years formal probation. In addition, due to an ICE hold, Respondent was to be deported.
2 The circumstances of the criminal offense are that Respondent committed an act or acts of false
3 personation as alleged above in paragraphs 14 through 18, inclusive.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Misrepresentation of Material Fact in Obtaining a License)**

6 20. Respondent is subject disciplinary action under Health and Safety Code section
7 44072.2, subdivision (e), in that Respondent made a misrepresentation of material fact in
8 obtaining Technician License number EA 151871. Complainant refers to and by this reference
9 incorporates the allegations set forth above in paragraphs 14 though 18, inclusive, as though set
10 forth fully herein.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 21. Respondent is subject to disciplinary action under Health and Safety Code section
14 44072.2, subdivision (a), in that Respondent sections of the Motor Vehicle Inspection Program
15 and the Automotive Repair Act as follows:

16 a. **Business and Professions Code section 9889.22 and Health and Safety Code**
17 **section 44059:** Respondent willfully made materially false statements regarding his identity when
18 he submitted a renewal application, which was signed under penalty of perjury and submitted to
19 the Bureau on or about May 3, 2011, and subsequently submitted a certificate of course
20 completion, both under the false name of Jose Luis Manfredy.

21 **OTHER MATTERS**

22 22. Health and Safety Code section 44072.8 states:

23 “When a license has been revoked or suspended following a hearing under this article, any
24 additional license issued under this chapter [the Motor Vehicle Inspection Program] in the name
25 of the licensee may be likewise revoked or suspended by the director.”

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1 PRAYER

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

- 4 1. Revoking or suspending Advanced Emission Specialist Technician License number
5 EA 151871 (to be redesignated upon renewal as EO 151871 and/or EI 151871), issued in the
6 name of Jose Luis Manfredy;
- 7 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
8 and Safety Code in the name of Jose Luis Manfredy or Jose Refugio Gutierrez Garcia;
- 9 3. Ordering Jose Luis Manfredy a.k.a. Jose Refugio Gutierrez Garcia to pay the Bureau
10 of Automotive Repair the reasonable costs of the investigation and enforcement of this case,
11 pursuant to Business and Professions Code section 125.3;
- 12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: October 29, 2013 Patrick Dorais

15 PATRICK DORAIS
16 Acting Chief
17 Bureau of Automotive Repair
18 Department of Consumer Affairs
19 State of California
20 *Complainant*

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