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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:  
  
**MD AUTO REPAIR AND TIRES INC.,  
DBA MD AUTO REPAIR AND TIRES;  
MAHMOUD DIBAS, PRESIDENT  
8750 Jamacha Road  
Spring Valley, CA 91977**  
  
Automotive Repair Dealer Registration No. **ARD 223519**  
Smog Check Station License No. **RC 223519**  
Lamp Station License No. **LS 223519**  
Brake Station License No. **BS 223519**  
  
and  
  
**OSCAR MICHEL  
341 Sunrise Drive  
San Ysidro, CA 92173**  
  
**Smog Check Inspector License No.  
EO 144973**  
**Smog Check Repair Technician License No.  
EI 144973**  
  
Respondents.

Case No. 79/14-127

**DEFAULT DECISION AND ORDER  
ONLY AS TO OSCAR MICHEL**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 6, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation

1 No. 79/14-127 against Oscar Michel (Respondent Michel) before the Director of Consumer  
2 Affairs. (Accusation attached as Exhibit A.)

3 2. On or about January 16, 2003, the Director issued Advanced Emission Specialist  
4 Technician License Number EA 144973 ("technician license") to Respondent Michel.  
5 Respondent Michel's technician license was in full force and effect at all times relevant to the  
6 charges brought in Accusation No. 79/14-127 and was due to expire on December 31, 2012.  
7 Respondent Michel renewed the technician license upon his election, as Smog Check Inspector  
8 License Number EO 144973 and Smog Check Repair Technician License Number EI 144973.<sup>1</sup>  
9 The licenses will expire on December 31, 2014, unless renewed.

10 3. On or about May 7, 2014, Respondent Michel was served by Certified and First Class  
11 Mail copies of Accusation No. 79/14-127, Statement to Respondent, Notice of Defense, Request  
12 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
13 11507.7) at Respondent Michel's address of record which, pursuant to Business and Professions  
14 Code section 136, is required to be reported and maintained with the Bureau. Respondent  
15 Michel's address of record was and is 341 Sunrise Drive, San Ysidro, CA 92173.

16 4. Service of the Accusation was effective as a matter of law under the provisions of  
17 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
18 124.

19 5. On or about May 28, 2014, the aformentioned documents were returned by the U.S.  
20 Postal Service marked "Unclaimed."

21 6. Government Code section 11506 states, in pertinent part:

22 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
23 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
24 of the accusation not expressly admitted. Failure to file a notice of defense shall  
25 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
26 may nevertheless grant a hearing.

26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.



1 comply with California Code of Regulations, title 16, section 3340.30, subdivision (a), in a  
2 material respect, as follows: Respondent Michel failed to inspect, test and repair the 1992  
3 Chevrolet in accordance with Health and Safety Code sections 44012, 44035 and California Code  
4 of Regulations, title 16, section 3340.42.

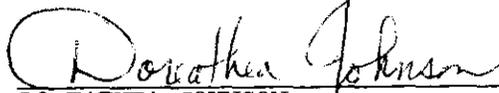
5 ORDER

6 IT IS SO ORDERED that Smog Check Inspector License No. EO144973 and Smog Check  
7 Repair Technician License No. EI 144973, issued to Respondent Michel are revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent Michel may  
9 serve a written motion requesting that the Decision be vacated and stating the grounds relied on  
10 within seven (7) days after service of the Decision on Respondent. The motion should be sent to  
11 the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd.,  
12 Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a  
13 hearing on a showing of good cause, as defined in the statute.

14 This Decision shall become effective on August 27, 2014.

15 It is so ORDERED August 6, 2014

16  
17   
18 DOREATHEA JOHNSON  
19 Deputy Director, Legal Affairs  
20 Department of Consumer Affairs

21 70883140.DOC  
22 DOJ Matter ID:SD2013706495

23 Attachment:  
24 Exhibit A: Accusation  
25  
26  
27  
28

# Exhibit A

Accusation No. 79/14-127

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 RITA M. LANE  
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6 San Diego, CA 92186-5266  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against:  
13 **MD AUTO REPAIR AND TIRES INC.,**  
**DBA MD AUTO REPAIR AND TIRES;**  
14 **MAHMOUD DIBAS, PRESIDENT**  
**8750 Jamacha Road**  
15 **Spring Valley, CA 91977**  
16 **Automotive Repair Dealer Registration No.**  
**ARD 223519**  
17 **Smog Check Station License No. RC 223519**  
**Lamp Station License No. LS 223519**  
18 **Brake Station License No. BS 223519**  
19 **and**  
20 **OSCAR MICHEL**  
**341 Sunrise Drive**  
21 **San Ysidro, CA 92173**  
22 **Smog Check Inspector License No.**  
**EO 144973**  
23 **Smog Check Repair Technician License No.**  
**EI 144973**  
24  
25 Respondents.

Case No. **79/14-127**

**ACCUSATION**

26  
27  
28 Complainant alleges:

1 **PARTIES**

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

4 **MD Auto Repair and Tires Inc.**

5 2. In 2002, the Bureau of Automotive Repair issued Automotive Repair Dealer  
6 Registration Number ARD 223519 to MD Auto Repair and Tires Inc., dba MD Auto Repair and  
7 Tires, Mahmoud Dibas, President (Respondent MD). The Automotive Repair Dealer Registration  
8 was in full force and effect at all times relevant to the charges brought herein and will expire on  
9 August 31, 2014, unless renewed.

10 3. On or about March 10, 2003, the Bureau of Automotive Repair issued Smog Check  
11 Station License Number RC 223519 to MD Auto Repair and Tires Inc., dba MD Auto Repair and  
12 Tires, Mahmoud Dibas, President. The Smog Check Station License was in full force and effect  
13 at all times relevant to the charges brought herein and will expire on August 31, 2014, unless  
14 renewed.

15 4. On or about December 19, 2006, the Bureau of Automotive Repair issued Lamp  
16 Station License Number LS 223519 to MD Auto Repair and Tires Inc., dba MD Auto Repair and  
17 Tires, Mahmoud Dibas, President. The Lamp Station License was in full force and effect at all  
18 times relevant to the charges brought herein and will expire on August 31, 2014, unless renewed.

19 5. On or about December 19, 2006, the Bureau of Automotive Repair issued Brake  
20 Station License Number BS 223519 to MD Auto Repair and Tires Inc., dba MD Auto Repair and  
21 Tires, Mahmoud Dibas, President. The Brake Station License was in full force and effect at all  
22 times relevant to the charges brought herein and will expire on August 31, 2014, unless renewed.

23 **Oscar Michel**

24 6. On or about January 16, 2003, the Director issued Advanced Emission Specialist  
25 Technician License Number EA 144973 ("technician license") to Oscar Michel ("Respondent  
26 Michel"). Respondent Michel's technician license was in full force and effect at all times relevant  
27 to the charges brought herein and was due to expire on December 31, 2012. Respondent Michel  
28 renewed the technician license upon his election, as Smog Check Inspector License Number EO

1 144973 and Smog Check Repair Technician License Number EI 144973.<sup>1</sup> The licenses will  
2 expire on December 31, 2014, unless renewed.

### 3 JURISDICTION

4 7. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
5 Bureau of Automotive Repair (Bureau), under the authority of the following laws. All section  
6 references are to the Business and Professions Code (Code) unless otherwise indicated.

7 8. Code section 9884.7 provides that the Director may revoke an automotive repair  
8 dealer registration.

9 9. Code section 9884.13 provides, in pertinent part, that the expiration of a valid  
10 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding  
11 against an automotive repair dealer or to render a decision temporarily or permanently  
12 invalidating (suspending or revoking) a registration.

13 10. Code section 9889.1 provides, in pertinent part, that the Director may suspend or  
14 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the  
15 Automotive Repair Act.

16 11. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a  
17 license by operation of law or by order or decision of the Director or a court of law, or the  
18 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any  
19 disciplinary proceedings.

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

23 13. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration  
24 or suspension of a license by operation of law, or by order or decision of the Director of

25 ///

26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the  
2 Director of jurisdiction to proceed with disciplinary action.

### 3 STATUTORY PROVISIONS

4 14. Code section 22, subdivision (a), states:

5 "Board" as used in any provision of this Code, refers to the board in  
6 which the administration of the provision is vested, and unless otherwise expressly  
7 provided, shall include "bureau," "commission," "committee," "department,"  
8 "division," "examining committee," "program," and "agency."

8 15. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes  
9 "registration" and "certificate."

10 16. Code section 9884.7 states:

11 (a) The director, where the automotive repair dealer cannot show there was a  
12 bona fide error, may deny, suspend, revoke, or place on probation the registration  
13 of an automotive repair dealer for any of the following acts or omissions related to  
14 the conduct of the business of the automotive repair dealer, which are done by the  
15 automotive repair dealer or any automotive technician, employec, partner, officer,  
16 or member of the automotive repair dealer.

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

17 ...  
18 (4) Any other conduct that constitutes fraud.

19 ...  
20 (6) Failure in any material respect to comply with the provisions of this  
21 chapter or regulations adopted pursuant to it.

22 17. Code section 9884.8 states:

23 All work done by an automotive repair dealer, including all warranty work,  
24 shall be recorded on an invoice and shall describe all service work done and parts  
25 supplied. Service work and parts shall be listed separately on the invoice, which  
26 shall also state separately the subtotal prices for service work and for parts, not  
27 including sales tax, and shall state separately the sales tax, if any, applicable to  
28 each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall  
clearly state that fact. If a part of a component system is composed of new and  
used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The  
invoice shall include a statement indicating whether any crash parts are original  
equipment manufacturer crash parts or nonoriginal equipment manufacturer

1 aftermarket crash parts. One copy of the invoice shall be given to the customer and  
2 one copy shall be retained by the automotive repair dealer.

3 18. Code section 9889.9 states:

4 When any license has been revoked or suspended following a hearing under  
5 the provisions of this article [Article 7 (commencing with section 9889.1) of the  
6 Automotive Repair Act], any additional license issued under Articles 5 and 6 of  
7 this chapter in the name of the licensee may be likewise revoked or suspended by  
8 the director.

9 19. Health and Safety Code section 44012 states, in pertinent part:

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

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

28 20. Health and Safety Code section 44015 states, in pertinent part:

(a) A licensed smog check station shall not issue a certificate of compliance,  
except as authorized by this chapter, to any vehicle that meets the following  
criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of  
subdivision (b) of Section 44036. A vehicle identified pursuant to subparagraph  
(K) of paragraph (3) of subdivision (b) of Section 44036 shall be directed to the  
department to determine whether an inadvertent error can explain the irregularity,  
or whether the vehicle otherwise meets smog check requirements, allowing the  
certificate for compliance to be issued, or the vehicle shall be reinspected by a  
referee or another smog check station.

(3) A vehicle that, prior to repairs, has been initially identified by the smog  
check station as a gross polluter. Certification of a gross polluting vehicle shall be  
conducted by a designated test-only facility, or a test-and-repair station that is both  
licensed and certified pursuant to Sections 44014 and 44014.2.

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

3 . . . . .  
4 21. Health and Safety Code section 44032 states:

5 No person shall perform, for compensation, tests or repairs of emission control  
6 devices or systems of motor vehicles required by this chapter unless the person  
7 performing the test or repair is a qualified smog check technician and the test or  
8 repair is performed at a licensed smog check station. Qualified technicians shall  
perform tests of emission control devices and systems in accordance with Section  
44012.

9 22. Health and Safety Code section 44035 states:

10 (a) A smog check station's license or a qualified smog check technician's  
11 qualification may be suspended or revoked by the department, after a hearing, for  
12 failure to meet or maintain the standards prescribed for qualification, equipment,  
13 performance, or conduct. The department shall adopt rules and regulations  
governing the suspension, revocation, and reinstatement of licenses and  
qualifications and the conduct of the hearings.

14 (b) The department or its representatives, including quality assurance inspectors,  
15 shall be provided access to licensed stations for the purpose of examining property,  
station equipment, repair orders, emissions equipment maintenance records, and  
any emission inspection items, as defined by the department.

16 23. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

21 . . . . .  
22 (c) Violates any of the regulations adopted by the director pursuant to  
23 this chapter.

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

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

28 ///

1 **REGULATIONS**

2 25. California Code of Regulations, title 16, section 3340.30 states in pertinent part:

3 A smog check technician shall comply with the following requirements at all  
4 times while licensed.

5 (a) A licensed technician shall inspect, test and repair vehicles in accordance  
6 with section 44012 of the Health and Safety Code, section 44035 of the Health and  
7 Safety Code and section 3340.42 of this section.

8 26. California Code of Regulations, title 16, section 3340.35(c), states:

9 A licensed station shall issue a certificate of compliance or noncompliance  
10 to the owner or operator of any vehicle that has been inspected in accordance with  
11 the procedures specified in section 3340.42 of this article and has all the required  
12 emission control equipment and devices installed and functioning correctly.

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

14 Smog check stations and smog check technicians shall conduct tests and  
15 inspections in accordance with the bureau's BAR-90 Test Analyzer System  
16 Specifications referenced in section 3340.17(a) or the BAR-97 Emissions  
17 Inspection System Specifications referenced in section 3340.17(a) and (b),  
18 whichever is appropriate, and the following:

19 (a) There shall be two test procedures as follows:

20 (1) The loaded-mode test method shall be the primary test method used in  
21 the enhanced program areas of the state. The loaded-mode test method shall  
22 measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen  
23 emissions. The loaded-mode test equipment shall be Acceleration Simulation  
24 Mode (ASM) test equipment, including a chassis dynamometer, certified by the  
25 bureau. The loaded-mode test procedures, including the preconditioning  
26 procedure, shall only be conducted according to the bureau approved procedures  
27 specified in this section and include the following:

28 (2) The two-speed idle mode test method shall be used in all program areas  
of the state, other than the enhanced program areas. The two-speed idle mode test  
method shall measure hydrocarbon, carbon monoxide and carbon dioxide  
emissions at high RPM and again at idle RPM, as contained in the bureau's  
specifications referenced in Section 3340.16.7(a). Exhaust emissions from a  
vehicle subject to inspection shall be tested and compared to the emission  
standards set forth in this section and as shown in Table III.

29 28. California Code of Regulations, title 16, section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or  
made any false or misleading statement or advertisement which is known to be  
false or misleading, or which by the exercise of reasonable care should be known

1 to be false or misleading. Advertisements and advertising signs shall clearly show  
the following:

2 (a) Firm Name and Address. The dealer's firm name and address as they  
3 appear on the State registration certificate as an automotive repair dealer; and

4 (b) Telephone Number. If a telephone number appears in an advertisement  
5 or on an advertising sign, this number shall be the same number as that listed for  
6 the dealer's firm name and address in the telephone directory, or in the telephone  
company records if such number is assigned to the dealer subsequent to the  
publication of such telephone directory.

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

8 No automotive repair dealer or individual in charge shall, in filling out an  
9 estimate, invoice, or work order, or record required to be maintained by section  
10 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or  
11 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.

#### 12 COSTS

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

#### 17 UNDERCOVER OPERATION 1 – 1992 CHEVROLET

18 31. Prior to an undercover run at the Respondent MD's facility, Bureau personnel had  
19 inspected and documented a 1992 Chevrolet. The only emission repair necessary for the 1992  
20 Chevrolet to pass a properly performed Smog Check Inspection was to repair the control wire of  
21 the Air Injection Reaction (AIR) system.

22 32. On or about May 1, 2013, a Bureau undercover operator ("operator") drove the  
23 Bureau documented 1992 Chevrolet to Respondent MD's facility and requested a Smog Check  
24 Inspection. The operator signed an estimate and was given a copy. Smog test results obtained  
25 from the Bureau's Vehicle Information Database show that Respondent Michel performed a  
26 Smog Check Inspection on the 1992 Chevrolet and the vehicle failed. The operator authorized  
27 Respondent MD to diagnose the cause of the Smog Check Inspection failure. Respondent MD's  
28 employec gave the operator an estimate totaling \$98.00 for the diagnostic. Following the

1 diagnosis Respondent MD's employee called the operator and told her that the 1992 Chevrolet  
2 needed to have the wiring harness repaired and the catalytic converter replaced. The operator was  
3 given a new estimate of \$651.96 for the repairs, smog check inspection and the diagnostic. The  
4 operator authorized the repairs. On or about May 2, 2013, the operator returned to the subject  
5 facility to retrieve the 1992 Chevrolet. Respondent MD's employee told the operator that the  
6 wiring harness had been repaired and the catalytic converter was replaced. The operator paid  
7 \$651.96, received Invoice No. [REDACTED] and a Vehicle Inspection Report (VIR) that shows the  
8 undercover vehicle passed the smog inspection, and Certificate of Compliance number  
9 [REDACTED]. The undercover operator was also given a copy of the VIR for the failed smog test  
10 conducted on May 1, 2013.

11 33. On or about May 7, 2013, Bureau personnel re-inspected the 1992 Chevrolet and  
12 compared the repairs from Respondent MD's Invoice No. [REDACTED]. Bureau personnel found that  
13 the catalytic converter had been replaced. The only repair necessary for the 1992 Chevrolet to  
14 pass a properly performed Smog Check Inspection was the repair of the wiring problem to the  
15 AIR system, which was not performed as invoiced. The replacement of the catalytic converter  
16 was unnecessary. Bureau personnel performed another smog check inspection of the 1992  
17 Chevrolet and it still failed the tailpipe emission portion of the test for excessive NOx levels.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 34. Respondent MD's registration is subject to discipline pursuant to Code section  
21 9884.7(a)(1), in that Respondent MD made statements which it knew or which by exercise of  
22 reasonable care should have known to be untrue or misleading as follows:

23 a. On or about May 1, 2013, Respondent MD's employee told the undercover  
24 operator that the catalytic converter needed to be replaced in the Bureau's 1992 Chevrolet, when  
25 it was in good serviceable condition, and not in need of replacement.

26 b. On or about May 1, 2013, Respondent MD invoiced and charged the operator  
27 for the repair of the secondary air injection system for the 1992 Chevrolet, but in fact did not  
28 actually perform this repair.

1 c. On May 2, 2013, Respondent MD issued a signed Vehicle Inspection Report  
2 indicating that the 1992 Chevrolet had passed the smog inspection and a Certificate of  
3 Compliance to a vehicle that should not have passed the smog inspection when it issued a  
4 Certificate of Compliance for the 1992 Chevrolet, which had high levels of NOx emissions and  
5 failed a smog check both prior to arriving and after leaving Respondent MD's facility.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 35. Respondent MD's registration is subject to discipline pursuant to Code section  
9 9884.7, subdivision(a)(4), in that Respondent MD committed acts constituting fraud as follows:

10 a. On or about May 2, 2013, Respondent MD accepted payment for the  
11 replacement of the 1992 Chevrolet's catalytic converter when the replacement was unnecessary.

12 b. On or about May 1, 2013, Respondent MD invoiced and charged the operator  
13 for the repair of the secondary air injection system for the 1992 Chevrolet, but in fact did not  
14 actually perform this repair.

15 c. On May 2, 2013, Respondent MD issued a signed Vehicle Inspection Report  
16 indicating that the 1992 Chevrolet had passed the smog inspection and a Certificate of  
17 Compliance to a vehicle that should not have passed the smog inspection when it issued a  
18 Certificate of Compliance for the 1992 Chevrolet, which had high levels of NOx emissions and  
19 failed a smog check both prior to arriving and after leaving Respondent MD's facility.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Code)**

22 36. Respondent MD's registration is subject to discipline pursuant to Code section  
23 9884.7, subdivision (a)(6), in that Respondent MD failed to comply with Code section 9884.8  
24 when on or about May 1, 2013, Respondent failed to disclose new, used, rebuilt, or reconditioned  
25 parts supplied to the 1992 Chevrolet on Invoice No. [REDACTED] provided to the operator.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 37. Respondent MD's Smog Check Station license is subject to discipline pursuant to  
4 Health and Safety Code section 44072.2, subdivision (c), in that Respondent MD failed to comply  
5 with the following sections of the California Code of Regulations, title 16:

6 38. **Section 3340.35(c)** – Respondent MD issued a Certificate of Compliance to a vehicle  
7 which had not been inspected in accordance with section 3340.42. On or about May 2, 2013,  
8 Respondent MD issued a Certificate of Compliance for the 1992 Chevrolet even though it had  
9 high levels of NOx emissions and had failed a smog check prior to arriving at Respondent MD's  
10 facility.

11 39. **Section 3371** – Respondent MD made false or misleading statements as follows:

12 a. On or about May 1, 2013, Respondent MD told the operator that the catalytic  
13 converter needed to be replaced in the Bureau's 1992 Chevrolet, when it was in good serviceable  
14 condition, and not in need of replacement.

15 b. On or about May 1, 2013, Respondent MD invoiced and charged the operator  
16 for the repair of the secondary air injection system for the 1992 Chevrolet, but in fact did not  
17 actually perform this repair.

18 c. On May 2, 2013, Respondent MD issued a signed Vehicle Inspection Report  
19 indicating that the 1992 Chevrolet had passed the smog inspection and a Certificate of  
20 Compliance to a vehicle that should not have passed the smog inspection when it issued a  
21 Certificate of Compliance for the 1992 Chevrolet, which had high levels of NOx emissions and  
22 failed a smog check both prior to arriving and after leaving Respondent MD's facility

23 40. **Section 3373** – Respondent MD withheld or added information to documents which  
24 would cause them to be false or misleading as follows:

25 a. On or about May 1, 2013, Respondent MD wrote on Invoice No. [REDACTED] that the  
26 catalytic converter needed to be replaced in the Bureau's 1992 Chevrolet, when it was in good  
27 serviceable condition, and not in need of replacement.

28 ///



1 not pass the smog inspection. Respondent Michel issued a Certificate of Compliance to a vehicle  
2 that should not have passed the smog inspection.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations Pursuant**  
5 **to the Motor Vehicle Inspection Program)**

6 43. Respondent Michel's technician licenses are subject to disciplinary action pursuant to  
7 Health and Safety Code section 44072.2, subdivision (c), in that Respondent Michel failed to  
8 comply with California Code of Regulations, title 16, section 3340.30, subdivision (a), in a  
9 material respect, as follows: Respondent Michel failed to inspect, test and repair the 1992  
10 Chevrolet in accordance with Health and Safety Code sections 44012, 44035 and California Code  
11 of Regulations, title 16, section 3340.42.

12 **UNDERCOVER OPERATION 2 – 2002 CHEVROLET**

13 44. Prior to an undercover run at the Respondent MD's facility, Bureau personnel  
14 inspected and documented a 2002 Chevrolet. Bureau personnel had created a malfunction in the  
15 2002 Chevrolet's secondary ignition system by damaging the spark plug wire going to the #2  
16 cylinder. This caused the Chevrolet's check engine light to flash on and off and to cause high  
17 levels of emissions to emit from the Chevrolet's tailpipe, causing it to fail the emissions portion  
18 of a smog check inspection.

19 45. On or about June 13, 2013, an operator drove the Bureau documented 2002 Chevrolet  
20 to Respondent MD's facility and requested a Smog Check Inspection. The operator told  
21 Respondent MD's employee that the check engine light was on. The employee told the operator  
22 that the vehicle would fail the smog inspection automatically because the check engine light was  
23 on. The employee recommended a diagnostic inspection for \$98.00, which the operator  
24 authorized. After the diagnostic was completed, Respondent MD's employee told the operator  
25 that the Chevrolet's spark plugs were misfiring and that the voltage for one of the spark plug  
26 wires was not going to where it was needed. The employee recommended the replacement of the  
27 spark plugs and the spark plug wires for \$324.97, which included the diagnostic. The operator  
28 authorized the repairs. Later that day when the operator went back to Respondent MD's facility

1 to pick up the 2002 Chevrolet, she was told that the smog check inspection had not been done  
2 because the vehicle needed to reset itself and that she needed to drive the vehicle for 80 miles  
3 before it could be smog checked. The vehicle was released to the operator and she was given  
4 Invoice No. [REDACTED]

5 46. On or about June 19, 2013, Bureau personnel re-inspected the 2002 Chevrolet and  
6 compared the repairs from Respondent MD's Invoice No. [REDACTED]. Bureau personnel found that all  
7 of the spark plug wires and spark plugs had been replaced. The only repair necessary for the 2002  
8 Chevrolet to pass a properly performed Smog Check Inspection were the replacement of the spark  
9 plug wires. The replacement of the spark plugs were unnecessary, as Bureau personnel had  
10 installed new spark plugs prior to the undercover run. Bureau personnel also determined that the  
11 "Perform Drive Cycle" listed on Invoice No. [REDACTED] had not been performed because three of the  
12 OBD II monitors had not run to completion.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 50. Respondent MD's registration is subject to discipline pursuant to Code section  
16 9884.7(a)(1), in that Respondent MD made statements which he knew or which by exercise of  
17 reasonable care should have known to be untrue or misleading when on or about June 13, 2013,  
18 Respondent MD's employee told the undercover operator that the spark plugs needed to be  
19 replaced in the Bureau's 2002 Chevrolet, when they were in good serviceable condition, and not  
20 in need of replacement.

21 **NINTH CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 47. Respondent MD's registration is subject to discipline pursuant to Code section  
24 9884.7, subdivision(a)(4), in that Respondent MD committed acts constituting fraud when on or  
25 about June 13, 2013, Respondent MD's employee told the undercover operator that the spark  
26 plugs needed to be replaced in the Bureau's 2002 Chevrolet, when they were in good serviceable  
27 condition, and not in need of replacement.

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

DATED: May 6, 2014

*Patrick Dorais*

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

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