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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 and Petition to  
Revoke Probation Against:

12 **CHARBEL ELKHOURY**  
13 **5623 Avenida Classica**  
14 **Palmdale, CA 93551**

15 **Smog Check Inspector License No. EO**  
**142229**  
16 **Smog Check Repair Technician License No.**  
**EI 142229 (formerly Advanced Emission**  
17 **Specialist Technician EA 633890)**

18 Respondent.

Case No. **79/16-75**

**ACCUSATION AND PETITION TO**  
**REVOKE PROBATION**

19  
20 Complainant alleges:

21 **PARTIES**

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

24 2. In 2000, the Bureau of Automotive Repair issued Advanced Emission Specialist  
25 Technician License EA 142229 to Charbel Elkhoury. Pursuant to California Code of Regulations,  
26 title 16, section 3340.28, subdivision (e), upon Respondent's election, said license was renewed as  
27 Smog Check Inspector License (EO) License No. 142229 and Smog Check Repair Technician  
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1 (EI) License No. 142229, effective March 11, 2013. The Smog Check Inspector (EO) License  
2 was in full force and effect at all times relevant to the charges brought herein and will expire on  
3 March 31, 2017, unless renewed. The Smog Check Repair Technician (EI) License expired on  
4 March 31, 2015, and has not been renewed.

5 3. In a disciplinary action entitled "In the Matter of Accusation Against M & M Test  
6 Only; Charbel Elkhoury, aka Charbel El Khoury, et al.," Case No. 79/12-46, the Director of  
7 Consumer Affairs for the Bureau of Automotive Repair, issued a decision, effective October 17,  
8 2014, in which Respondent Elkhoury's Smog Check Inspector (EO) License No. 142229 and  
9 Smog Check Repair Technician (EI) License No. EI 142229 were revoked. However, the  
10 revocations were stayed and Respondent Elkhoury's licenses were placed on probation for a  
11 period of two (2) years with certain terms and conditions. A copy of that decision is attached as  
12 Exhibit A and is incorporated by reference.

### 13 JURISDICTION FOR ACCUSATION

14 4. This Accusation is brought before the Director of Consumer Affairs ("Director") for  
15 the Bureau of Automotive Repair, under the authority of the following laws.

16 5. Section 44002 of the Health and Safety Code ("HSC") provides, in pertinent part, that  
17 the Director has all the powers and authority granted under the Automotive Repair Act for  
18 enforcing the Motor Vehicle Inspection Program.

19 6. Section 44072 of the HSC states:

20 "Any license issued under this chapter and the regulations adopted pursuant to it may be  
21 suspended or revoked by the director. The director may refuse to issue a license to any applicant  
22 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted  
23 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2  
24 of the Government Code, and the director shall have all the powers granted therein."

25 7. Section 44072.6 of the HSC states:

26 "The expiration or suspension of a license by operation of law or by order or decision of the  
27 director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive

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1 the director of jurisdiction to proceed with any investigation of, or action or disciplinary  
2 proceedings against, the licensee, or to render a decision suspending or revoking the license.”

3 **STATUTORY PROVISIONS**

4 8. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations  
5 shall be performed in accordance with procedures prescribed by the department.

6 9. Section 44032 of the HSC provides, in pertinent part, that “[q]ualified technicians shall  
7 perform tests of emission control devices and systems in accordance with Section 44012.”

8 10. Section 44059 of the HSC provides:

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

13 11. Section 44072.2 of the HSC 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  
18 (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which  
19 related to the licensed activities . . .

20 . . .

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

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

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1 **REGULATORY PROVISIONS**

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

4 “The bureau may suspend or revoke the license of or pursue other legal action against a  
5 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a  
6 certificate of noncompliance.”

7 13. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician  
8 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section  
9 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
10 3340.42 of this article.”

11 14. CCR, title 16, section 3340.41, subdivision (c), provides: “No person shall  
12 enter into the emissions inspection system any vehicle identification information or emission  
13 control system identification data for any vehicle other than the one being tested. Nor shall any  
14 person knowingly enter into the emissions inspection system any false information about the  
15 vehicle being tested.”

16 15. CCR, title 16, section 3340.42, sets forth specific emissions test methods and  
17 procedures which apply to all vehicles inspected in the State of California.

18 **UNDERCOVER OPERATION – APRIL 8, 2015**

19 16. In March 2015, a Bureau program representative at the Bureau’s Forensic  
20 Documentation Laboratory in Valencia, California, inspected and documented the emissions  
21 systems on a 1989 Chevrolet (“undercover vehicle”). During this process, the program  
22 representative determined and documented that among the required emission control systems on  
23 the undercover vehicle was a negative backpressure exhaust gas recirculation (i.e., “EGR”)  
24 system. EGR systems contain a valve that recirculates a portion of an engine’s exhaust gas back  
25 to the engine cylinders for the purpose of reducing nitrogen oxide (“NOx”) emissions. After  
26 finding that the undercover vehicle’s emissions systems were in compliance with California’s  
27 Motor Vehicle Inspection Program, the program representative deliberately removed the EGR  
28 valve and valve gasket on the vehicle. The program representative then installed an inoperable

1 EGR valve and blocking plate on the vehicle. In that condition, the undercover vehicle was no  
2 longer in compliance with California's Motor Vehicle Inspection Program. Specifically, the  
3 undercover vehicle was unable to pass the functional portion of the smog inspection program as  
4 required by state law.

5 17. On or about April 8, 2015, an undercover Bureau operator drove the undercover  
6 vehicle to the 1<sup>st</sup> Star Smog and Repair station and requested a smog inspection. At that time, the  
7 undercover vehicle was still not in compliance with the requirements of the Motor Vehicle  
8 Inspection Program due to the inoperable EGR valve and blocking plate installed on the engine.  
9 Nonetheless, Respondent Charbel Elkhoury performed a smog inspection on the undercover  
10 vehicle and issued electronic Certificate of Compliance No. [REDACTED], thereby falsely certifying  
11 that the vehicle had passed the requirements of the Motor Vehicle Inspection Program.

12 **FIRST CAUSE FOR DISCIPLINE**

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

14 18. Respondent Charbel Elkhoury has subjected his smog check inspector and smog check  
15 repair technician licenses to discipline under HSC section 44072.2, subdivision (a), in that he  
16 violated the following sections of the HSC with respect to his inspection of an undercover Bureau  
17 vehicle:

- 18 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
19 performed in accordance with procedures prescribed by the department.
- 20 b. **Section 44032:** Respondent failed to perform tests of the emission control devices  
21 and systems on the vehicle in accordance with section 44012 of the HSC.
- 22 c. **Section 44059:** Respondent willfully made false entries for the electronic certificate of  
23 compliance by certifying that the vehicle had been inspected as required by state law when, in fact,  
24 it had not.

25 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
26 paragraphs 16 and 17, inclusive, as though set forth fully herein.

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1 incorporates, the allegations set forth above in paragraphs 23 and 24, inclusive, as though set forth  
2 fully herein.

3 **SECOND CAUSE TO REVOKE PROBATION**

4 **(Failure to Complete Training Course)**

5 25. At all times after the effective date of Respondent's probation, Condition 8 stated:

6 "Within one hundred eighty (180) days of the effective date of the decision, Respondent  
7 Charbel Elkhoury, aka Charbel El Khoury, shall attend and successfully complete a 68-hour  
8 Bureau Certified Licensed Inspector Training Course (Level 1), and submit proof of successful  
9 completion to the Bureau. If proof of completion is not furnished to the Bureau within the 180-  
10 day period Respondent Charbel Elkhoury's, aka Charbel El Khoury's, Smog Check Inspector and  
11 Smog Repair Technician License shall each be immediately suspended until such proof is  
12 received."

13 26. Respondent's probation is subject to revocation because he failed to comply with  
14 Probation Condition 8, referenced above. The facts and circumstances regarding this violation are  
15 that Respondent failed to attend and successfully complete a 68-hour Bureau Certified Licensed  
16 Inspector Training Course (Level 1) within 180 days of the effective date of the decision in Case  
17 No. 79/12-46 and/or failed to furnish the Bureau with proof of completion of said course within  
18 that time period.

19 **THIRD CAUSE TO REVOKE PROBATION**

20 **(Failure to Pay Cost Recovery)**

21 27. At all times after the effective date of Respondent's probation, Condition 9 stated:

22 "Payment to the Bureau of the full amount of cost recovery in the amount of \$5,132.00 shall  
23 be received no later than twelve (12) months before probation terminates. Respondent shall be  
24 jointly and severally responsible for full cost recovery. Failure to complete payment of cost  
25 recovery within the 12-month time frame shall constitute a violation of probation which may  
26 subject Respondents' registration and licenses to outright revocation; however, the Director of the  
27 Director's Bureau of Automotive Repair designee may elect to continue probation until such time

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1 as reimbursement of the entire cost recovery amount has been made to the Bureau. Respondents  
2 will be permitted to make twelve (12) equal monthly installments of \$427.67.”

3 28. Respondent’s probation is subject to revocation because he failed to comply with  
4 Probation Condition 9, referenced above. The facts and circumstances regarding this violation are  
5 that Respondent has failed to make any payments toward the \$5,132.00 he was ordered to pay in  
6 cost recovery and has, therefore, failed to pay the full cost of \$5,132,00 no later than twelve (12)  
7 months before probation is scheduled to terminate.

8 **PRAYER**

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

11 1. Revoking or suspending Smog Check Inspector (EO) License Number 142229 issued  
12 to Charbel Elkhoury;

13 2. Revoking or suspending Smog Check Repair Technician (EI) License Number 142229  
14 issued to Charbel Elkhoury;

15 3. Revoking the probation that was granted in Case No. 79/12-4, “In the Matter of  
16 Accusation Against M & M Test Only; Charbel Elkhoury, aka Charbel El Khoury, et al.,” and  
17 imposing the disciplinary order that was stayed, thereby revoking Smog Check Inspector (EO)  
18 License Number 142229 and Smog Check Repair Technician (EI) License Number 142229 issued  
19 to Charbel Elkhoury;

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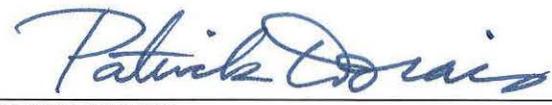
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1           4.    Ordering Charbel Elkhoury to pay reasonable costs related to the Bureau of  
2 Automotive Repair's investigation and enforcement of the charges related to the Accusation in this  
3 matter, pursuant to Business and Professions Code section 125.3;

4           5.    Taking such other and further action as deemed necessary and proper.

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6 DATED: March 3, 2016

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

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