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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:

Case No.

79/14-127

13 **MD AUTO REPAIR AND TIRES INC.,**
14 **DBA MD AUTO REPAIR AND TIRES;**
MAHMOUD DIBAS, PRESIDENT
15 **8750 Jamacha Road**
Spring Valley, CA 91977

A C C U S A T I O N

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.**
24 **EI 144973**

Respondents.

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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 144973.¹ 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

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26 ¹ 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, employee, 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
2 station licensed to issue certificates shall issue a certificate of compliance or a
3 certificate of noncompliance.

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
9 perform tests of emission control devices and systems in accordance with Section
10 44012.

11 22. Health and Safety Code section 44035 states:

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

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

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

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

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

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

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

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

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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:

30 No dealer shall publish, utter, or make or cause to be published, uttered, or
31 made any false or misleading statement or advertisement which is known to be
32 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 licensee 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.

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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.

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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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1 **TENTH CAUSE FOR DISCIPLINE**

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

3 48. Respondent MD's registration is subject to discipline pursuant to Code section
4 9884.7, subdivision (a)(6), in that Respondent MD failed to comply with Code section 9884.8
5 when on or about June 13, 2013, Respondent failed to disclose new, used, rebuilt, or
6 reconditioned parts supplied on the invoice provided to the operator.

7 **ELEVENTH CAUSE FOR DISCIPLINE**

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

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

12 50. **Section 3371** - On or about June 13, 2013, Respondent MD made false or misleading
13 statements when it told the operator that the spark plugs needed to be replaced in the 2002
14 Chevrolet, when they were in good serviceable condition, and not in need of replacement.

15 51. **Section 3373** - On or about June 13, 2013, Respondent MD withheld or inserted
16 information, causing a document to be false or misleading when it wrote on Invoice No. [REDACTED]
17 that the spark plugs needed to be replaced in the 2002 Chevrolet, when they were in good
18 serviceable condition, and not in need of replacement.

19 **DISCIPLINE CONSIDERATIONS**

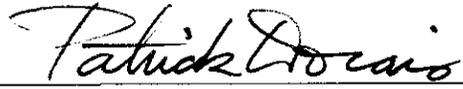
20 52. To determine the degree of discipline, if any, to be imposed on Respondent MD,
21 Complainant alleges that on or about June 3, 2002, in a prior disciplinary action entitled *In the*
22 *Matter of the Accusation Against MD Auto Repair & Tires, Mahmoud Dibas, Owner*, before the
23 Bureau of Automotive Repair, in Case Number 77/01-88, Respondent's Automotive Repair
24 Dealer Registration was disciplined for charging for work that did not need to be done, fraud, and
25 false statements. Respondent's Automotive Repair Dealer Registration was revoked, the
26 revocation stayed and placed on probation for three years with a five day suspension period (June
27 3, 2002 Decision). The June 3, 2002 Decision is now final.

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

DATED: May 6, 2014


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

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