

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

RAFAEL MARTINEZ QUIROZ,
240 W. 67th Way
Long Beach, CA 90805

Smog Check Inspector License
No. EO 150225

Respondent.

Case No.: 79/12-42

OAH No. 2012070581

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 1, paragraph 2, fourth line, under Factual Findings, of the Proposed Decision is corrected as follows:

The expiration date of "April 30, 2011" of the Automotive Repair Dealer Registration No. ARD 258078 and Smog Check, Test Only, Station License No. TC 258078 is corrected to read "April 30, 2014."

This Decision shall become effective _____

7/19/13

DATED: June 13, 2013



DONALD CHANG

Assistant Chief Counsel
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

RAFAEL MARTINEZ QUIROZ,

Respondent.

Case No.: 79/12-42

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PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard these consolidated matters in Los Angeles, California on January 17, 2013.

Matthew A. King, Deputy Attorney General, Department of Justice, Office of the Attorney General, represented complainant Sherry Mehl, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department). Respondent Rafael Martinez Quiroz represented himself.

The matter was submitted January 17, 2013. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

FACTUAL FINDINGS

1. In 2005, the Bureau issued Smog Check Inspector License number EO150225 (previously EA150225) to Rafael Martinez Quiroz. The license expires September 30, 2014.
2. Elvia Martinez, doing business as Cypress Smog Check and holding Automotive Repair Dealer License number ARD258078 and Smog Check Only, Test Station License number TC258078, employs respondent Quiroz. The automotive repair dealer and smog check licenses expired April 30, 2011, unless renewed.
3. On July 26, 2010, respondent Quiroz performed a smog inspection of a 1990 Toyota Celica at the request of the vehicle's owner. At the conclusion of the inspection, respondent Quiroz informed the owner that the vehicle failed the smog inspection because the ignition timing needed an adjustment. Based on respondent Quiroz's representation, the owner took the vehicle to another mechanic who adjusted the vehicle's ignition timing. The

following day, the owner of the Toyota Celica returned to Cypress Smog Check to have the vehicle inspected again. Respondent Quiroz performed another smog inspection, and he again informed the owner that the Toyota Celica failed the inspection. Respondent Quiroz instructed the owner to return with the vehicle the next day, and for a \$140, he (respondent Quiroz) would make the vehicle pass the smog inspection. The owner filed a consumer complaint against respondent Quiroz with the Bureau disclosing the facts set forth herein. Thereafter, the Bureau commenced an undercover investigation.

4. On November 17, 2010, Bureau personnel sent a 1992 Mitsubishi Eclipse GS (Mitsubishi) to Cypress Smog Check for a smog inspection after Program Representative Allen Palad documented that modified emission control components were present in the vehicle. The Multi-Port Injection fuel system was modified with a non-Original Equipment Manufacturer (OEM) adjustable fuel pressure regulator and a fuel gauge. The Positive Crankcase Ventilation (PCV) system was missing a PCV breather tube and non-OEM open air-breather filter and an intake port plug. The California Air Resource Board's approval in the form of an Executive Order (EO) is required for modified emission-related parts installed in a vehicle's engine. The California Air Resource Board (ARB) assigns an EO number to each modified part, and the EO number is either affixed to the modified part or an EO certificate accompanies the vehicle. There are no EO approval numbers affixed to the Mitsubishi's modified component parts. There is no EO certificate for the Mitsubishi modified parts including "Weapon R" Hyper Intake system, adjustable fuel pressure regulator, and open air breather filter. A California ASM Smog Check requires a licensed technician to visually inspect a vehicle's emission components for their presence and proper installation as well as for non-ARB approved modifications. Program Representative Palad performed a California ASM Smog Check on the Mitsubishi, which failed the visual portion of the test for modified Fuel Injection, modified PCV, and modified Other Related Emission Component. As a consequence, a Vehicle Inspection Report printout appropriately indicated failing results.

5. An undercover operator drove the Mitsubishi to Cypress Smog Check, and requested a smog inspection, which respondent Quiroz performed. Respondent Quiroz informed the undercover operator that the Mitsubishi had several modifications precluding it from passing the smog inspection. Respondent Quiroz queried the undercover operator about the original parts and, upon learning that the undercover operator knew nothing about their whereabouts, respondent Quiroz informed the undercover operator that he (respondent Quiroz) would pass the Mitsubishi if the undercover agent returns with the vehicle after business hours the next day and pays \$150. Respondent Quiroz sought to evade detection by the Bureau's inspectors.

6. On November 18, 2010, the undercover operator returned to Cypress Smog Check with the Mitsubishi, which respondent Quiroz inspected. As configured, the Mitsubishi should have failed the visual component of the smog inspection. Respondent Quiroz nonetheless passed the Mitsubishi on the visual component of the smog inspection, and he issued Certificate of Compliance number [REDACTED]. Respondent Quiroz took \$150 from the undercover operator after fraudulently notating on the pink copy of smog test-

only invoice number [REDACTED] (Ex. 9) that the inspection cost \$50. Respondent Quiroz instructed the undercover operator to misrepresent that he paid a discounted rate for the smog inspection should anyone inquire about pricing. Respondent Quiroz instructed the undercover agent to misrepresent that modifications to the Mitsubishi occurred after the vehicle was inspected. Respondent Quiroz instructed the undercover operator to falsify his phone number by changing the digit "3" to "8" on the white copy of smog test-only invoice number [REDACTED] to prevent any telephone contact from the owner of Cypress Smog Check.

7. At the hearing, respondent Quiroz admitted to his misconduct set forth above in Factual Findings 5 and 6. Respondent Quiroz's misconduct was motivated by, but not excused by, his personal financial stress. He testified, "I made a mistake. I was working very few hours and after he [the undercover operator] brought the car to me I was able to get a job. In the last four months I haven't made \$4,000. My wife is disabled. We lost the house."

8. The preponderance of evidence establishes that respondent Rafael Martinez Quiroz's inspection of the Mitsubishi's emission components contravenes the California ASM Smog Check requirements in violation of Health and Safety Code sections 44012, subdivision (f), and 44032 and California Code of Regulations, title 16, sections 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42.

9. The preponderance of evidence establishes that respondent Rafael Martinez Quiroz issued a certificate of compliance for the Mitsubishi with non-ARB approved modifications in violation of Health and Safety Code sections 44015, subdivision (a)(1), and 44059 and California Code of Regulations, title 16, section 3340.42, subdivision (c).

10. The Bureau incurred investigative costs in the amount of \$10,038.06 and prosecution costs in the amount of \$3,962.50. These costs are reasonable pursuant to Business and Professions Code section 125.3

LEGAL CONCLUSIONS

1. Health and Safety Code section 44002 authorizes the Department to enforce the Motor Vehicle Inspection Program.

2. Health and Safety Code section 44012 provides, in pertinent part, the following:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department The department shall ensure, as appropriate to the test method, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

[¶ . . . ¶]

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

3. Health and Safety Code section 44015 provides, in pertinent part, the following:

(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.

4. Health and Safety Code section 44032 provides that “[n]o person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or 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.”

5. Health and Safety Code section 44059 provides that “[t]he willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by . . . [the Motor Vehicle Inspection Program or Automotive Repair Act] constitutes perjury and is punishable as provided in the Penal Code.”

6. Health and Safety Code section 44072.2, subdivisions (a), (c), and (d), authorizes the Director to suspend, revoke, or take other disciplinary action against a license if the license holder violates provisions of the Motor Vehicle Inspection Program establishing inspections standards and test procedures—sections 44012, 44015 and 44059 in this instance—and regulations relating to the licensed activities, including California Code of Regulations, title 16, sections 3340.24, subdivision (c) (prohibiting false or fraudulent issuance of certificate of compliance), 3340.30, subdivision (a) (mandating inspections and tests in accordance with the Motor Vehicle Inspection Program), 3340.41, subdivision (c) (prohibiting the entry of false data or information into the emissions inspection system about a vehicle being tested or for any vehicle other than the one being not tested), and 3340.42 (establishing applicable emissions test methods and standards).

7. As to the First Cause for Discipline alleged in the Accusation, cause exists to discipline Smog Check Inspector License number EO150225 issued to Rafael Martinez Quiroz pursuant to Health and Safety Code sections 44002, 44012, subdivisions (a) and (f), 44032, and 44059, in that respondent Quiroz violated the Motor Vehicle Inspection Program as set forth in Factual Findings 3 through 9, inclusive.

8. As to the Second Cause for Discipline alleged in the Accusation, cause exists to discipline Smog Check Inspector License number EO150225 issued to Rafael Martinez Quiroz pursuant to Health and Safety Code section 44002 and California Code of Regulations sections 3340.24, subdivision(c), 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42 in that respondent Quiroz violated the Motor Vehicle Inspection Program and promulgated regulations as set forth in Factual Findings 3 through 9, inclusive.

9. As to the Third Cause for Discipline alleged in the Accusation, cause exists to discipline Smog Check Inspector License number EO150225 issued to Rafael Martinez Quiroz pursuant to Health and Safety Code sections 44002, 44059 and 44072.2 in that respondent Quiroz engaged in conduct constituting dishonesty, fraud and deceit as set forth in Factual Findings 3 through 9, inclusive.

10. Pursuant to California Code of Regulations, title 16, section 3395.4, the Bureau has promulgated *Guidelines for Disciplinary Penalties and Terms of Probation* (May 1997), which requires consideration of specified factors in aggravation and mitigation when determining appropriate discipline. Misconduct in this case is egregious in that it involves dishonesty and fraud, to which respondent has admitted. Credible evidence suggests that respondent's misconduct is not a one-time occurrence, but rather, a repeated and willful course of behavior. On an occasion prior to the undercover operation, respondent sought to extract money from a consuming member of the public in connection with a smog inspection. Credible evidence suggests that respondent misconduct is likely to recur should he confront additional personal, financial stresses. Respondent attributed his misconduct to his insufficient financial resources. The totality of the evidence mandates revocation of respondent's smog check inspector license to protect the public health and welfare.

11. Cause exists pursuant to Business and Professional Code section 125.3 to order respondent to pay the Bureau's reasonable costs of investigation and prosecution set forth in Factual Finding 10.

12. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. App. 4th 32, 45, the Bureau must exercise its discretion to reduce or eliminate cost awards so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Bureau] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Bureau, in imposing costs in such situations, must consider the licensee's subjective good

faith belief in the merits of his or her position and the Bureau must consider whether or not the licensee has raised a colorable defense. The Bureau must also consider the licensee's ability to make payment.

13. Considering all of the *Zuckerman* factors, including respondent's financial situation set forth in Factual Finding 7, respondent shall pay the Bureau its reasonable costs of investigation and prosecution totaling \$14,000.56, but only in the event that Smog Check Inspector License number EO150225 is reinstated in the future.

ORDER

1. Smog Check Inspector License number EO150225 issued to Rafael Martinez Quiroz is revoked.

2. Respondent Rafael Martinez Quiroz shall pay the Bureau its reasonable costs of investigation and prosecution totaling \$14,000.56 in the event that Smog Check Inspector License number EO150225 is reinstated in the future.

May 21, 2013



JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 79/12-41

13 **RAFAEL MARTINEZ QUIROZ**
240 W. 67th Way
Long Beach, CA 90805

FIRST AMENDED ACCUSATION
SMOG CHECK

14 **Advanced Emission Specialist Technician**
15 **License No. EA 150225**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist
22 Technician License Number EA 150225 to Rafael Martinez Quiroz (Respondent). Respondent's
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on September 30, 2012, unless renewed.

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1 13. California Code of Regulations, title 16, section 3340.30 provides, in pertinent part:
2 "A smog check technician shall comply with the following requirements at all times while
3 licensed.

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

7 14. California Code of Regulations, title 16, section 3340.41 provides, in pertinent part:

8 "(c) No person shall enter into the emissions inspection system any vehicle identification
9 information or emission control system identification data for any vehicle other than the one
10 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
11 information about the vehicle being tested."

12 19. California Code of Regulations, title 16, section 3340.42 provides, in pertinent part:

13 "With the exception of diesel-powered vehicles addressed in subsection (f) of this section,
14 the following emissions test methods and standards apply to all vehicles:

15 ...

16 "(e) In addition to the test methods prescribed in this section, the following tests shall apply
17 to all vehicles, except diesel-powered vehicles, during the Smog Check inspection:"

18 ...

19 "(e)(1) A visual inspection of the vehicle's emissions control systems. During the visual
20 inspection, the technician shall verify that the following emission control devices, as applicable,
21 are properly installed on the vehicle:

22 ...

23 "(e)(2) A functional inspection of the vehicle's emission control systems. During the
24 functional inspection, the technician shall conduct, as applicable, the following tests and
25 verifications of the vehicle[.]"

26 **COST RECOVERY**

27 15. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
28 may request the administrative law judge to direct a licensee found to have committed a

1 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
2 investigation and enforcement of the case.

3 **UNDERCOVER OPERATION - NOVEMBER 17, 2010**

4 16. On or about November 17, 2010, a Bureau undercover operator drove a Bureau-
5 documented 1992 Mitsubishi Eclipse to Cypress Smog Check, located at 701 Cypress Avenue in
6 Los Angeles, California. The vehicle was equipped with an unapproved open air breather filter,
7 an unapproved Weapon R. Hyper intake system, and an unapproved adjustable fuel pressure
8 regulator. The vehicle could not pass the visual portion of the smog inspection due to the
9 unapproved equipment. Respondent drove the vehicle into the test bay and opened the hood.
10 After a brief inspection, Respondent informed the operator he could not test the vehicle due to the
11 unapproved equipment. Respondent told the operator to return the next day after 5:00 p.m., at
12 which time he would pass the vehicle for \$150.

13 17. On November 18, 2010, the operator returned to the facility. The operator filled out
14 and signed a work order and received a copy of the same. Respondent performed the smog
15 inspection and issued electronic Certificate of Compliance Number [REDACTED]. The operator
16 paid Respondent \$150 and was provided with Invoice Number [REDACTED] which set forth a price of
17 \$50. Respondent instructed the operator to change one of the digits in his telephone number on
18 the invoice should the owner of the business attempt to call him. Respondent encouraged the
19 operator to return to Respondent for certification and to refer Respondent to others needing to
20 pass a smog inspection.

21 **FIRST CAUSE FOR DISCIPLINE**

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

23 18. Respondent has subjected his technician license to discipline under Code section
24 44072.2, subdivision (a), in that on or about November 18, 2010, regarding the 1992 Mitsubishi
25 Eclipse, Respondent committed the following violations of the Motor Vehicle Inspection
26 Program:

27 a. Code Section 44012, subdivision (a): Respondent failed to determine that all
28 emission control devices and systems required by law were installed and functioning correctly in

1 accordance with test procedures.

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

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

6 d. Code Section 44059: Respondent willfully made false entries for electronic
7 Certificate of Compliance No. [REDACTED] certifying that the vehicle had been inspected as
8 required when, in fact, it had not.

9 **SECOND CAUSE FOR DISCIPLINE**

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

11 19. Respondent has subjected his technician license to discipline under Code section
12 44072.2, subdivision (c), in that on or about November 18, 2010, regarding the 1992 Mitsubishi
13 Eclipse, he violated sections of the California Code of Regulations, title 16, as follows:

14 a. Code Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued
15 electronic Certificate of Compliance No. [REDACTED] without performing a bona fide inspection
16 of the emission control devices and systems on that vehicle as required by Code section 44012.

17 b. Code Section 3340.30, subdivision (a): Respondent failed to inspect and test that
18 vehicle in accordance with Code section 44012.

19 c. Code Section 3340.41, subdivision (c): Respondent entered false information into
20 the Emission Inspection System for electronic Certificate of Compliance No. [REDACTED] by
21 entering "Pass" for the visual inspection when, in fact, the vehicle could not pass the visual
22 inspection because the vehicle was equipped with unapproved equipment.

23 d. Code Section 3340.42: Respondent failed to conduct the required smog tests and
24 inspections on that vehicle in accordance with the Bureau's specifications.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Dishonesty, Fraud or Deceit)**

27 20. Respondent has subjected his technician license to discipline under Code section
28 44072.2, subdivision (d), in that on or about November 18, 2010, regarding the 1992 Mitsubishi

1 Eclipse, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
2 issuing electronic Certificate of Compliance No. [REDACTED] without performing a bona fide
3 inspection of the emission control devices and systems on that vehicle, thereby depriving the
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection
5 Program.

6 OTHER MATTERS

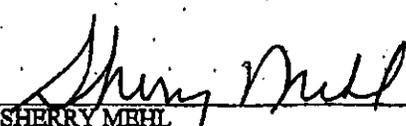
7 21. Under Code section 44072.8, if Advanced Emission Specialist Technician License
8 Number EA 150225, issued to Rafael Martínez Quiroz, is revoked or suspended, any additional
9 license issued under this chapter in the name of said licensee may be likewise revoked or
10 suspended by the director.

11 PRAYER

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

- 14 1. Revoking or suspending Advanced Emission Specialist Technician License Number
15 EA 150225, issued to Rafael Martinez Quiroz;
- 16 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Rafael Martinez Quiroz;
- 18 3. Ordering Rafael Martinez Quiroz to pay the Bureau of Automotive Repair the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3; and,
- 21 4. Taking such other and further action as deemed necessary and proper.

22
23
24 DATED: 1/25/12


25 SHERRY MEHL
26 Chief
27 Bureau of Automotive Repair
28 Department of Consumer Affairs
State of California
Complainant

27 LA2011500918
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