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7

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

10
11 In the Matter of the Accusation Against:

Case No. 79/16-18732

12 **SMOG PROS TEST ONLY,**
RAMON ESTRADA JR., OWNER
13 13136 Paramount Blvd.
South Gate, CA 90280
14

OAH No. 2017030592

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
ARD 284940
16 **Smog Check, Test Only, Station License No.**
TC 284940

17 **RAMON ESTRADA JR.**
8020 Birchcrest Road, Apt. C107
18 Downey, CA 90240

19 **Smog Check Inspector License No. EO**
636166
20

21 **EDGAR ANTONIO PEREZ**
1248 W. 73rd Street
22 Los Angeles, CA 90044

23 **Smog Check Inspector License No. EO**
638034

24 Respondents.
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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about September 27, 2016, the Bureau of Automotive Repair issued
6 Automotive Repair Dealer Registration Number ARD 284940 to Smog Pros Test Only, with
7 Ramon Estrada Jr. as the owner (“Respondent Smog Pros”). The Automotive Repair Dealer
8 Registration was in full force and effect at all times relevant to the charges brought herein and
9 will expire on September 30, 2017, unless renewed.

10 3. On or about October 7, 2016, the Bureau of Automotive Repair issued Smog Check
11 Test Only Station License Number TC 284940 to Respondent Smog Pros. The Smog Check Test
12 Only Station License was in full force and effect at all times relevant to the charges brought
13 herein and will expire on September 30, 2017, unless renewed.

14 4. On or about October 21, 2013, the Bureau of Automotive Repair issued Smog Check
15 Inspector License Number EO 636166 to Ramon Estrada Jr. (“Respondent Estrada”). The Smog
16 Check Inspector License was in full force and effect at all times relevant to the charges brought
17 herein and will expire on March 31, 2018, unless renewed.

18 5. On or about April 10, 2015, the Bureau of Automotive Repair issued Smog Check
19 Inspector License Number EO 638034 to Edgar Antonio Perez (“Respondent Perez”). The Smog
20 Check Inspector License was in full force and effect at all times relevant to the charges brought
21 herein and will expire on June 30, 2017, unless renewed.

22 **JURISDICTION**

23 6. This Accusation is brought before the Director of the Department of Consumer
24 Affairs (“Director”) for the Bureau of Automotive Repair, under the authority of the following
25 laws.

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1 (4) Any other conduct that constitutes fraud.

2

3 (6) Failure in any material respect to comply with the provisions of this
4 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
5 regulations adopted pursuant to it.

6

7 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
8 place on probation the registration for all places of business operated in this state by
9 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
10 engaged in a course of repeated and willful violations of this chapter, or regulations
11 adopted pursuant to it.

12 13. Health and Safety Code section 44012 states, in pertinent part:

13 The test at the smog check stations shall be performed in accordance with procedures
14 prescribed by the department and may require loaded mode dynamometer testing in
15 enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic
16 system, or other appropriate test procedures as determined by the department in
17 consultation with the state board. The department shall implement testing using
18 onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle
19 testing, on model year 2000 and newer vehicles only, beginning no earlier than
20 January 1, 2013. However, the department, in consultation with the state board, may
21 prescribe alternative test procedures that include loaded mode dynamometer or two-
22 speed idle testing for vehicles with onboard diagnostic systems that the department
23 and the state board determine exhibit operational problems. The department shall
24 ensure, as appropriate to the test method, the following:

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

28 14. Health and Safety Code Section 44015 states, in pertinent part:

(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 certificate of
noncompliance.

15. Health and Safety Code Section 44059 states:

The 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 this chapter or Chapter 20.3 (commencing with Section 9880) of
Division 3 of the Business and Professions Code, constitutes perjury and is
punishable as provided in the Penal Code.

16. Health and Safety Code section 44072.2 states:

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

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

4

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

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

8

9 (h) Violates or attempts to violate the provisions of this chapter relating to the
10 particular activity for which he or she is licensed.

11 17. Health and Safety Code section 44072.8 states:

12 When a license has been revoked or suspended following a hearing under this article,
13 any additional license issued under this chapter in the name of the licensee may be
14 likewise revoked or suspended by the director.

15 **REGULATORY PROVISIONS**

16 18. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides
17 that “[t]he bureau may suspend or revoke the license of or pursue other legal action against a
18 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
19 certificate of noncompliance.”

20 19. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides, in
21 pertinent part, that: “[a] licensed station shall issue a certificate of compliance or noncompliance
22 to the owner or operator of any vehicle that has been inspected in accordance with the procedures
23 specified in section 3340.42 of this article and has all the required emission control equipment
24 and devices installed and functioning correctly. The following conditions shall apply:

25 "(1) Customers shall be charged the same price for certificates as that paid by the licensed
26 station; and

27 "(2) Sales tax shall not be assessed on the price of certificates.”

28 20. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides
that no person shall enter into the emissions inspection system any vehicle identification
information or emission control system identification data for any vehicle other than the one

1 being tested. Nor shall any person knowingly enter any false information about the vehicle being
2 tested into the emissions inspection system.

3 21. California Code of Regulations, title 16, section 3340.42 provides, in pertinent part:

4 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
5 methods:

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7 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
8 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.

9 The OBD test failure criteria are specified in section 3340.42.2.

10 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
11 receive the following:

12

13 “(2) A functional inspection of emission control systems as specified in the Smog Check
14 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper
15 operation.”

16 COST RECOVERY

17 22. Section 125.3 provides, in pertinent part, that a Board may request the administrative
18 law judge to direct a licentiate found to have committed a violation or violations of the licensing
19 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
20 case.

21 FACTUAL BACKGROUND

22 23. On or about March 9, 2015, the Bureau implemented a statewide regulatory change
23 requiring the use of the On Board Diagnostic Inspection System (“BAR-OIS”) instead of the
24 Emission Inspection System for the smog testing of 2000 model year and newer gas powered and
25 hybrid vehicles.

26 24. On or about October 5, 2016, the Bureau conducted an initial inspection of
27 Respondent Smog Pros and the Bureau representative informed Respondent Estrada and
28 Respondent Perez that any fraudulent smog inspection, including clean plugging, would result in
administrative discipline.

1 25. The Bureau reviewed smog check inspection records from the BAR-OIS, which
2 indicated that Respondent Smog Pros was engaging in fraudulent smog check activities through
3 the commission of multiple acts of “clean plugging.”

4 26. Clean plugging is a method used to fraudulently certify vehicles that will not pass a
5 smog inspection on their own. To clean plug, a technician or inspector uses another vehicle’s
6 properly functioning On-Board Diagnostics – Generation II (“OBD II”) system, or another
7 source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog
8 certificates of compliance.

9 27. The Bureau’s review of BAR-OIS test data for inspections performed at Respondent
10 Smog Pros indicated that Respondent Smog Pros, under the license and access code of
11 Respondent Perez, performed ten Smog inspections containing data that conflicted with expected
12 values. The representative found the vehicles inspected were missing their electronic Vin
13 (“eVIN”) and had incorrect vehicle communication protocols and incorrect parameter
14 identification (“PID”) counts.

15 28. The communication protocol describes the specified communication ‘language’ used
16 by the vehicle’s OBD II system to communicate with other devices such as the BAR-OIS. The
17 communication protocol is programmed into the OBD II computer during manufacturing and
18 does not change. PIDs are data points reported by the OBD II computer to the BAR- OIS. The
19 PID count is the number of data points reported by the OBD II computer and is programmed
20 during manufacturing. The data from the vehicles certified by Respondent Smog Pros showed
21 multiple discrepancies with incorrect communication protocols and incorrect PID counts. This
22 confirms the vehicles receiving smog certificates were fraudulently tested during the smog
23 inspection using the clean plugging method.

24 29. The VID data further indicated that Respondent Perez performed ten (10) smog check
25 inspections that resulted in the issuance of eight (8) electronic certificates of compliance for the
26 following vehicles:

27 ///

28 ///

Table 1: Fraudulent Inspections Performed by Respondent Perez

Vehicle in OIS Data	Expected Comm. Protocol	Comm. Protocol in OIS Data	Expected PID Count	PID Count in OIS Data	Certificate Issued (Date Issued)
2008 Toyota Scion TC	ICAN11bt5	1914	39 or 39 15	8	QG008607C (10/12/2016)
2005 Chrysler 300	ICAN11bt5	1914	43 8	8	QG008614C (10/14/2016)
2005 Chevrolet Colorado	JVPW	1914	19	9	QG008617C (10/15/2016)
2011 Nissan Altima 2.5 / 2.5 S	ICAN11bt5	1914	39 or 40	8	QG008618C (10/15/2016)
2008 Suzuki Foreza	ICAN11bt5	1914	38 or 38 1	8	QG008619C (10/15/2016)
2005 KIA New Spectra LX/EX	KWPF	1914	16 1 or 17 or 17 1	8	QG008624C (10/18/2016)
2004 BMW 330 CI	1914	1914	22 or 22 1 or 22 4	8	None
2004 Chevrolet Tahoe	JVPW	1914	22	9	QG008650C (11/9/2016)
2004 BMW 330 CI	1914	1914	22 or 22 1 or 22 4	8	ZJ952702C (11/9/2016)
2001 Honda Civic LX	1914	1914	16 or 17	8	None

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

30. Respondent Smog Pros' automotive repair dealer registration is subject to discipline pursuant to section 9884.7, subdivision (a)(1), in that Respondent Smog Pros made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Smog Pros inspector, Respondent Perez, certified that the vehicles identified in Table 1 following paragraph 29, above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Perez conducted the

1 inspections on the vehicles using clean-plugging methods by using another vehicle's properly
2 functioning OBD II system, or another source, to generate passing diagnostic readings for the
3 purpose of issuing fraudulent smog certificates of compliance to the vehicles, and did not test or
4 inspect the vehicles as required by Health & Safety Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 31. Respondent Smog Pros' automotive repair dealer registration is subject to discipline
8 pursuant to section 9884.7, subdivision (a)(4), in that Respondent Smog Pros, through its
9 inspector Respondent Perez, committed acts that constitute fraud by issuing electronic smog
10 certificates of compliance for the vehicles identified in Table 1 following paragraph 29, above,
11 without performing bona fide inspections of the emission control devices and systems on the
12 vehicles, thereby depriving the People of the State of California of the protection afforded by the
13 Motor Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

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

16 32. Respondent Smog Pros' smog check test only station license is subject to
17 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
18 Respondent Smog Pros' failed to comply with the following sections of that Code:

19 a. **Section 44012:** Respondent Smog Pros, through its inspector Respondent Perez,
20 failed to ensure that the emission control tests for the vehicles identified in Table 1 following
21 paragraph 29, above, were performed in accordance with procedures prescribed by the
22 department.

23 b. **Section 44015:** Respondent Smog Pros, through its inspector Respondent Perez,
24 issued electronic smog certificates of compliance for the vehicles identified in Table 1 following
25 paragraph 29, above, without ensuring that the vehicles were properly tested and inspected to
26 determine if they were in compliance with Health and Safety Code section 44012.

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1 c. **Section 44059:** Respondent Smog Pros, through its inspector Respondent Perez,
2 willfully made false entries to the BAR-OIS, resulting in the issuance of fraudulent certificates of
3 compliance for the vehicles identified in Table 1 following paragraph 29, above.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations)**

6 33. Respondent Smog Pros' smog check test only station license is subject to
7 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
8 Respondent Smog Pros' failed to comply with provisions of title 16 of the California Code of
9 Regulations, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondent Smog Pros, through its inspector
11 Respondent Perez, falsely or fraudulently issued electronic smog certificates of compliance for
12 the vehicles identified in Table 1 following paragraph 29, above.

13 b. **Section 3340.35, subdivision (c):** Respondent Smog Pros, through its inspector
14 Respondent Perez, issued electronic smog certificates of compliance for the vehicles identified in
15 Table 1 following paragraph 29, above, even though the vehicles had not been inspected in
16 accordance with section 3340.42.

17 c. **Section 3340.41, subdivision (c):** Respondent Smog Pros, through its inspector
18 Respondent Perez, entered false information into the BAR-OIS by entering vehicle identification
19 information or emission control system identification data for a vehicle, or source, not being
20 tested.

21 **FIFTH CAUSE FOR DISCIPLINE**

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

23 34. Respondent Smog Pros' smog check test only station license is subject to
24 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
25 Respondent Smog Pros, through its inspector Respondent Perez, committed dishonest, fraudulent,
26 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
27 for the vehicles identified in Table 1 following paragraph 29, above, without performing bona
28 fide inspections of the emission control devices and systems on the vehicles, thereby depriving

1 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 35. Respondent Estrada's smog check inspector license and Respondent Perez'
6 smog check inspector license are subject to disciplinary action pursuant to Health and Safety
7 Code section 44072.2, subdivision (a), in that Respondent Estrada and Respondent Perez failed to
8 comply with the following sections of that Code:

9 a. **Section 44012:** Respondent Estrada and Respondent Perez failed to ensure that the
10 emission control tests for the vehicles identified in Table 1 following paragraph 29, above, were
11 performed in accordance with procedures prescribed by the department.

12 b. **Section 44015:** Respondent Estrada and Respondent Perez issued, or authorized the
13 issuance of, electronic smog certificates of compliance for the vehicles identified in Table 1
14 following paragraph 29, above, without ensuring that the vehicles were properly tested and
15 inspected to determine if they were in compliance with Health and Safety Code section 44012.

16 c. **Section 44059:** Respondent Estrada and Respondent Perez willfully made, or
17 authorized the making of, false entries to the BAR-OIS, resulting in the issuance of fraudulent
18 certificates of compliance for the vehicles identified in Table 1 following paragraph 29, above.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations)**

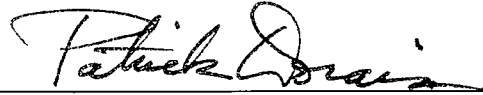
21 36. Respondent Estrada's smog check inspector license and Respondent Perez'
22 smog check inspector license are subject to disciplinary action pursuant to Health and Safety
23 Code section 44072.2, subdivision (c), in that Respondent Estrada and Respondent Perez failed to
24 comply with provisions of California Code of Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent Estrada and Respondent Perez falsely
26 or fraudulently issued, or authorized the issuance of, electronic smog certificates of compliance
27 for the vehicles identified in Table 1 following paragraph 29, above.

1 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
2 Professions Code section 125.3; and,

3 9. Taking such other and further action as deemed necessary and proper.
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7 DATED: April 27, 2017


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

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