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

12 In the Matter of the Accusation Against:  
13 **RAUL GARCIA MARQUEZ**  
14 **dba MARQUEZ SMOG AND REPAIR**  
15 **1426 North Blackstone**  
16 **Fresno, CA 93703**  
17 **Automotive Repair Dealer Registration No. ARD**  
18 **262688**  
19 **Smog Check Repair Station License No. RC 262688**  
20 **RAUL GARCIA MARQUEZ**  
21 **1230 West Cambridge**  
22 **Fresno, CA 93705**  
23 **Smog Check Inspector License No. EO 631345 Smog**  
24 **Check Repair Technician License No. EI 631345**  
25 **(formerly Advanced Emission Specialist Technician**  
26 **License No. EA 631345)**  
27 Respondent.

Case No. **79/15-134**  
**ACCUSATION**  
**(SMOG CHECK)**

28 Patrick Dorais (“Complainant”) alleges:

**PARTIES**

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



1 against an automotive repair dealer or to render a decision invalidating a registration temporarily  
2 or permanently.

3 7. Health and Safety Code section 44002 provides, in pertinent part, that the Director  
4 has all the powers and authority granted under the Automotive Repair Act for enforcing the  
5 Motor Vehicle Inspection Program.

6 8. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration  
7 or suspension of a license by operation of law, or by order or decision of the Director of  
8 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the  
9 Director of jurisdiction to proceed with disciplinary action.

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 Health and Safety Code section 44072.8 states that when a license has been revoked  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

13 10. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that  
14 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
15 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
16 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

### 17 STATUTORY PROVISIONS

18 11. Code section 9884.7 states, in pertinent part:

19 (a) The director, where the automotive repair dealer cannot show there  
20 was a bona fide error, may deny, suspend, revoke, or place on probation, the  
21 registration of an automotive repair dealer for any of the following acts or omissions  
22 related to the conduct of the business of the automotive repair dealer, which are done  
23 by the automotive repair dealer or any automotive technician, employee, partner,  
24 officer, or member of the automotive repair dealer.

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

25 (3) Failing or refusing to give to a customer a copy of any document  
26 requiring his or her signature, as soon as the customer signs the document.

26 (4) Any other conduct that constitutes fraud.

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

1 (b) Except as provided for in subdivision (c), if an automotive repair  
2 dealer operates more than one place of business in this state, the director pursuant to  
3 subdivision (a) shall only suspend, revoke, or place on probation the registration of  
4 the specific place of business which has violated any of the provisions of this chapter.  
5 This violation, or action by the director, shall not affect in any manner the right of the  
6 automotive repair dealer to operate his or her other places of business.

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 12. Code section 9884.8 states:

13 All work done by an automotive repair dealer, including all warranty  
14 work, shall be recorded on an invoice and shall describe all service work done and  
15 parts supplied. Service work and parts shall be listed separately on the invoice, which  
16 shall also state separately the subtotal prices for service work and for parts, not  
17 including sales tax, and shall state separately the sales tax, if any, applicable to each.  
18 If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state  
19 that fact. If a part of a component system is composed of new and used, rebuilt or  
20 reconditioned parts, that invoice shall clearly state that fact. The invoice shall include  
21 a statement indicating whether any crash parts are original equipment manufacturer  
22 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy  
23 of the invoice shall be given to the customer and one copy shall be retained by the  
24 automotive repair dealer.

25 13. Code section 9884.9 states:

26 (a) The automotive repair dealer shall give to the customer a written  
27 estimated price for labor and parts necessary for a specific job. No work shall be  
28 done and no charges shall accrue before authorization to proceed is obtained from the  
customer. No charge shall be made for work done or parts supplied in excess of the  
estimated price without the oral or written consent of the customer that shall be  
obtained at some time after it is determined that the estimated price is insufficient and  
before the work not estimated is done or the parts not estimated are supplied. Written  
consent or authorization for an increase in the original estimated price may be  
provided by electronic mail or facsimile transmission from the customer. The bureau  
may specify in regulation the procedures to be followed by an automotive repair  
dealer if an authorization or consent for an increase in the original estimated price is  
provided by electronic mail or facsimile transmission. If that consent is oral, the  
dealer shall make a notation on the work order of the date, time, name of person  
authorizing the additional repairs, and telephone number called, if any, together with  
a specification of the additional parts and labor and the total additional cost, and shall  
do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the  
notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or  
initials to an acknowledgment of notice and consent, if there is an oral consent of the  
customer to additional repairs, in the following language:

1 "I acknowledge notice and oral approval of an increase in the original  
2 estimated price.

3 \_\_\_\_\_  
4 (signature or initials)"

5 Nothing in this section shall be construed as requiring an automotive  
6 repair dealer to give a written estimated price if the dealer does not agree to perform  
7 the requested repair.

8 14. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

#### 19 COST RECOVERY

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

#### 24 UNDERCOVER OPERATION – MAY 14, 2014

25 16. On or about May 14, 2014, a Bureau undercover operator ("operator") drove a  
26 Bureau-documented Pontiac to Respondent's facility and requested a smog inspection. The  
27 vehicle could not pass a smog inspection because the vehicle's Air Injection Reaction system  
28 supply tubes and check valves were missing. The operator signed a work order but did not  
receive a copy. Respondent performed the smog inspection and issued electronic Certificate of  
Compliance Number [REDACTED], certifying that he had tested and inspected the vehicle and that  
the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not

1 have passed the visual portion of the smog inspection because the vehicle's Air Injection  
2 Reaction system supply tubes and check valves were missing. The operator paid Respondent  
3 \$40.00 and received a copy of the estimate, Invoice No. [REDACTED], and the Vehicle Inspection  
4 Report. On that same day, a Bureau representative re-inspected the vehicle and found that the  
5 vehicle's Air Injection Reaction system supply tubes and check valves remained missing.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statements)**

8 17. Respondent's registration is subject to discipline pursuant to Code section 9884.7,  
9 subdivision (a)(1), in that on or about May 14, 2014, he made or authorized statements which he  
10 knew or in the exercise of reasonable care should have known to be untrue by certifying that the  
11 vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not  
12 have passed the visual portion of the smog inspection because the vehicle's Air Injection  
13 Reaction system supply tubes and check valves remained missing.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 18. Respondent's registration is subject to discipline pursuant to Code section 9884.7,  
17 subdivision (a)(4), in that on or about May 14, 2014, he committed acts which constitute fraud by  
18 issuing electronic Certificate of Compliance No. [REDACTED] for the vehicle without performing a  
19 bona fide inspection of the emission control devices and systems on the vehicle, thereby  
20 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
21 Inspection Program.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Failure to Provide a Copy of a Signed Document)**

24 19. Respondent's registration is subject to discipline under Code section 9884.7,  
25 subdivision (a)(3), in that on or about May 14, 2014, Respondent failed to provide the operator  
26 with a copy of the estimate as soon as the operator signed the document.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 20. Respondent's station license is subject to discipline pursuant to Health & Safety  
4 Code section 44072.2, subdivision (a), in that on or about May 14, 2014, he failed to comply with  
5 the following sections of that Code:

6 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
7 control devices and systems required by law were installed and functioning correctly in  
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control  
10 tests on the vehicle in accordance with procedures prescribed by the department.

11 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
12 Compliance No. [REDACTED] for the vehicle without properly testing and inspecting the vehicle to  
13 determine if it was in compliance with Health & Safety Code section 44012.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

16 21. Respondent's station license is subject to discipline pursuant to Health & Safety  
17 Code section 44072.2, subdivision (c), in that on or about May 14, 2014, he failed to comply with  
18 provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
20 Compliance No. [REDACTED] for the vehicle even though the vehicle had not been inspected in  
21 accordance with section 3340.42.

22 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the  
23 vehicle in accordance with the Bureau's specifications.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 22. Respondent's station license is subject to discipline pursuant to Health & Safety  
27 Code section 44072.2, subdivision (d), in that on or about May 14, 2014, he committed dishonest,  
28 fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate of

1 Compliance No. [REDACTED] for the vehicle without performing a bona fide inspection of the  
2 emission control devices and systems on the vehicle, thereby depriving the People of the State of  
3 California of the protection afforded by the Motor Vehicle Inspection Program.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 23. Respondent's repair license and inspector license are subject to discipline pursuant  
7 to Health and Safety Code section 44072.2, subdivision (a), in that on or about May 14, 2014, he  
8 violated the following sections of that Code:

9 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
10 control devices and systems required by law were installed and functioning correctly in  
11 accordance with test procedures.

12 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control  
13 tests on the vehicle in accordance with procedures prescribed by the department.

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

16 **EIGHTH CAUSE FOR DISCIPLINE**

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

18 24. Respondent's repair license and inspector license are subject to discipline pursuant  
19 to Health and Safety Code section 44072.2, subdivision (c), in that on or about May 14, 2014, he  
20 violated the following sections of the California Code of Regulations, title 16:

21 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the  
22 vehicle in accordance with Health and Safety Code section 44012.

23 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the  
24 vehicle in accordance with the Bureau's specifications.

25 **NINTH CAUSE FOR DISCIPLINE**

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

27 25. Respondent's repair license and inspector license are subject to discipline pursuant to  
28 Health and Safety Code section 44072.2, subdivision (d), in that on or about May 14, 2014, he

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

6 **PRIOR DISCIPLINE**

7 26. To determine the degree of discipline, if any, Complainant alleges the following:

8 **Automotive Repair Dealer Registration/Smog Check Station License**

9 a. On or about April 17, 2012, the Bureau issued Citation No. C2012-1379 to  
10 Respondent against his registration and station licenses for violations of Health and Safety Code  
11 section 44012(f) (failure to perform a visual/functional check of emission control devices  
12 according to procedures prescribed by the department). Respondent issued a certificate of  
13 compliance to a Bureau vehicle that was missing the positive crankcase ventilation system. The  
14 Bureau assessed a civil penalty of \$1,000. Respondent complied with this citation on May 17,  
15 2012.

16 b. On or about January 4, 2013, the Bureau issued Citation No. C2013-0454 to  
17 Respondent against his registration and station licenses for violations of Health and Safety Code  
18 section 44012(f) (failure to perform a visual/functional check of emission control devices  
19 according to procedures prescribed by the department). Respondent issued a certificate of  
20 compliance to a Bureau vehicle with a missing Pulsed Air Injection System. The Bureau assessed  
21 a civil penalty of \$2,000. Respondent complied with this citation on February 6, 2013.

22 c. On or about July 3, 2013, the Bureau issued Citation No. C2014-0005 to Respondent  
23 against his registration and station licenses for violations of Health and Safety Code section  
24 44012(f) (failure to perform a visual/functional check of emission control devices according to  
25 procedures prescribed by the department). Respondent issued a certificate of compliance to a  
26 Bureau vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The  
27 Bureau assessed a civil penalty of \$3,000. Respondent complied with this citation on August 21,  
28 2013.



1 and Repair, is revoked or suspended, any additional license issued under this chapter in the name  
2 of said licensee may be likewise revoked or suspended by the director.

3 29. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector  
4 License No. 631345 and Smog Check Repair Technician License No. 631345, issued to Raul  
5 Garcia Marquez, is revoked or suspended, any additional license issued under this chapter in the  
6 name of said licensee may be likewise revoked or suspended by the director.

7 **PRAYER**

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

10 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
11 Registration No. ARD 262688, issued to Raul Garcia Marquez, doing business as Marquez Smog  
12 and Repair;

13 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
14 registration issued to Raul Garcia Marquez;

15 3. Revoking, suspending, or placing on probation Smog Check Station License  
16 Number RC 262688, issued to Raul Garcia Marquez, doing business as Marquez Smog and  
17 Repair;

18 4. Revoking, suspending, or placing on probation Smog Check Inspector License  
19 Number EO 631345, issued to Raul Garcia Marquez;

20 5. Revoking, suspending, or placing on probation Smog Check Repair Technician  
21 License Number EI 631345, issued to Raul Garcia Marquez;

22 6. Revoking, suspending, or placing on probation any additional license issued under  
23 Chapter 5 of the Health and Safety Code in the name of Raul Garcia Marquez;

24 7. Ordering Raul Garcia Marquez to pay the Director of Consumer Affairs the  
25 reasonable costs of the investigation and enforcement of this case, pursuant to Code section  
26 125.3; and,

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

DATED: June 23, 2015



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

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