

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **JAVIER REGALADO, OWNER,**
14 **DOING BUSINESS AS JR SMOG CHECK ONLY**
15 **P.O. Box 52559**
Riverside, CA 92517

16 **3720 Rubidoux Boulevard, #C**
17 **Riverside, CA 92509**

18 **Automotive Repair Dealer Registration No. ARD**
267929
19 **Smog Check-Test Only Station License No. TC**
20 **267929**

21 **EDGAR CHAVEZ**
22 **2409 Mission Inn Avenue**
23 **Riverside, CA 92507**

24 **Smog Check Inspector License No. EO 634002**
(formerly Advanced Emission Specialist Technician
25 **License No. EA 634002),**

26 Respondents.

27 ///

28 ///

Case No. 79/15-38

ACCUSATION

(SMOG CHECK)

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about February 10, 2012, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 267929 (the Registration) to Javier Regalado, Owner,
7 doing business as JR Smog Check Only (Respondent Regalado). 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 February 28, 2015, unless renewed.

10 3. On or about March 5, 2012, the Bureau of Automotive Repair issued Smog Check-
11 Test Only Station License Number TC 267929 (the Station License) to Respondent Regalado.
12 The Station License was in full force and effect at all times relevant to the charges brought herein
13 and will expire on February 28, 2015, unless renewed.

14 4. On February 3, 2012, the Bureau of Automotive Repair issued Advanced Emission
15 Specialist Technician License No. EA 634002 to Edgar Chavez (Respondent Chavez). The
16 license was cancelled on December 12, 2013. On that date, it was redesignated as Smog Check
17 Inspector License No. EO 634002 (Inspector License).¹ The Inspector License was in full force
18 and effect at all times relevant to the charges brought herein and will expire on November 30,
19 2015, unless renewed.

20 **JURISDICTION**

21 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the
22 Bureau of Automotive Repair, under the authority of the following laws.

23 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
24 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
25

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 disciplinary action during the period within which the license may be renewed, restored, reissued
2 or reinstated.

3 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
4 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
5 proceeding against an automotive repair dealer or to render a decision invalidating a registration
6 temporarily or permanently.

7 8. Section 9884.20 of the Code states:

8 "All accusations against automotive repair dealers shall be filed within three years after the
9 performance of the act or omission alleged as the ground for disciplinary action, except that with
10 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action,
11 the accusation may be filed within two years after the discovery, by the bureau, of the alleged
12 facts constituting the fraud or misrepresentation."

13 9. Section 9884.22 of the Code states:

14 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
15 at any time any registration required by this article on any of the grounds for disciplinary action
16 provided in this article. The proceedings under this article shall be conducted in accordance with
17 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
18 Code, and the director shall have all the powers granted therein.

19 "..."

20 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
21 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
22 the Motor Vehicle Inspection Program.

23 11. Section 44072 of the Health and Safety Code states:

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

1 (commencing with Section 473), is taken over by the department, that program shall be
2 designated as a 'bureau.'"

3 17. Section 23.7 of the Code states:

4 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or
5 other means to engage in a business or profession regulated by this code or referred to in Section
6 1000 or 3600."

7 18. Section 9884.7 of the Code states:

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

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

16 "...

17 "(4) Any other conduct that constitutes fraud.

18 "...

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

23 19. Section 44072.2 of the Health and Safety Code states:

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

1 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
2 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

3 COSTS

4 23. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
9 included in a stipulated settlement.

10 FIRST UNDERCOVER RUN

11 24. At all times alleged in this Accusation, Respondent Chavez and Jessie were acting in
12 the course and within the scope of a technician, employee, partner, officer, or member of
13 Respondent Regalado.

14 25. On January 9, 2014, at approximately 1045 hours, a Bureau representative gave an
15 undercover operator (the Operator) a Bureau-documented 2001 Honda. In its documented
16 condition, the 2001 Honda had the following parts removed: exhaust manifold, catalytic
17 converter, air intake cleaner assembly, Positive Crankcase Ventilation hose, camshaft gears, and
18 fuel pressure regulator. It had aftermarket exhaust headers and pipes without a catalytic
19 converter, an aftermarket air intake system, adjustable camshaft gears, an adjustable fuel pressure
20 regulator, and a breather assembly in place of the Positive Crankcase Ventilation hose. This
21 condition rendered the vehicle incapable of passing a proper smog inspection because of Gross
22 Polluter tailpipe emissions, missing and modified parts, and an illuminated system malfunction
23 light with a P0420 Catalyst System Efficiency code. The Operator was instructed to take the
24 vehicle to Respondent Regalado’s smog station, JR Smog Check Only, for a smog inspection.

25 26. When the Operator arrived at JR Smog Check Only, he spoke with one of Respondent
26 Regalado’s employees, Jessie. The Operator told Jessie that he had a vehicle that needed to pass
27 its smog inspection. After quoting the Operator \$180.00, Jessie told the Operator that the
28

1 station's emission analyzer wasn't working and asked him to return another day. The Operator
2 left the smog station.

3 27. On January 14, 2014, at 1019 hours, the Operator returned to Respondent Regalado's
4 smog station, JR Smog Check Only, for the inspection. Three males were at the station, including
5 Jessie and Respondent Chavez. Jessie asked the Operator for the keys and drove the Honda into
6 the testing bay, and opened the hood.

7 28. Respondent Chavez clean-piped the Bureau-documented Honda using the exhaust
8 sample from a Mercedes Benz ML430, CA License Number 6WGS663.

9 29. After the inspection, Jessie removed the probes from the exhaust of both vehicles.
10 Respondent Chavez got out of the Honda, went to the analyzer, and typed on the keyboard. Jessie
11 gave the Operator a work order to fill out. Jessie gave the Operator a copy of the invoice and the
12 Vehicle Inspection Report showing that the vehicle passed and that a certificate of compliance
13 had been issued. The Operator paid Jessie \$180.00, left with the vehicle, and returned custody of
14 it to a Bureau representative.

15 30. Later, a Bureau representative re-inspected the Honda. He confirmed that the
16 condition of the Honda had not changed since he released custody of it previously for the
17 undercover operation and that it would still fail a proper smog inspection in its condition.

18 **SECOND UNDERCOVER RUN**

19 31. On February 25, 2014, a Bureau representative gave an Operator a Bureau-
20 documented 2002 Ford. In its documented condition, the vehicle had its existing catalytic
21 converter and H-pipe removed. A Bureau representative installed an illegal, off-road X-pipe that
22 had no catalytic converters. The vehicle's existing air filter housing and inlet tube had been
23 removed; they were replaced with a non-approved cold air inlet system that did not have an
24 Executive Order sticker and was illegal. The Bureau representative also installed an illegal open
25 breather and a modification to prevent the malfunction indicator light from illuminating. In its
26 documented condition, the vehicle would fail a proper smog inspection because of Gross Polluter
27 tailpipe emissions and missing and modified components. The Operator was instructed to take
28

1 the vehicle to Respondent Regalado's smog station, JR Smog Check Only, ask them to perform a
2 smog inspection on that vehicle, and tell them that it needed to pass.

3 32. At 1130 hours on February 25, 2014, the Operator arrived at Respondent Regalado's
4 smog station, JR Smog Check Only. Jessie and Respondent Chavez were there. The Operator
5 told Jessie that he needed to have the Ford pass its smog inspection. Jessie quoted him \$120.00
6 for the inspection.

7 33. Jessie had the Operator fill out a work order. The Operator paid Jessie \$120.00. The
8 Operator received a copy of the invoice and Vehicle Inspection Report showing that a certificate
9 of compliance was issued. The Operator left with the Bureau-documented 2002 Ford and
10 returned custody of it to a Bureau representative.

11 34. Later, a Bureau representative re-inspected it. He confirmed that the condition of the
12 Ford had not changed since he released custody of it previously for the undercover operation and
13 that it still would fail a proper smog inspection in its condition.

14 35. Respondents had clean-piped the Bureau-documented Ford; a GMC Safari, California
15 license number [REDACTED], and a Honda Civic, California license number [REDACTED] using the
16 exhaust sample from a Honda Civic, California License number 6VXG265. All three of these
17 certified smog inspections resulted in smog certificates of compliance being issued.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 36. Respondent Regalado's Registration is subject to disciplinary action under section
21 9884.7, subdivision (a)(1), in that Respondent Regalado made or authorized statements which
22 Respondent Regalado knew or in the exercise of reasonable care should have known to be untrue
23 or misleading as follows: Respondent Regalado certified that the four vehicles described in
24 paragraphs 24-35 were properly inspected and passed their smog inspections, when in fact and in
25 truth those vehicles were not properly inspected.

26 ///

27 ///

28 ///

1 c. **Section 3340.42:** Respondent Regalado failed to conduct the required smog
2 tests on the vehicles described in paragraphs 24-35 in accordance with the Bureau's
3 specifications.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 39. Respondent Regalado's Registration is subject to disciplinary action under Code
7 section 9884.7, subdivision (a)(4), and Respondent Regalado's Station License is subject to
8 disciplinary action under Health and Safety Code sections 44072.10, subdivision (c) and 44072.2,
9 subdivision (d), in that Respondent Regalado committed dishonest, fraudulent, or deceitful acts
10 whereby another is injured by issuing smog inspection certificates for the vehicles described in
11 paragraphs 24-35 without performing bona fide inspections of the emission control devices and
12 systems on them, thereby depriving the People of the State of California of the protection afforded
13 by the Motor Vehicle Inspection Program.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Clean Piping)**

16 40. Respondent Regalado's Station license is subject to disciplinary action for clean
17 piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code
18 of Regulations, title 16, section 3340.1, in that Respondent Regalado used a substitute exhaust
19 emission sample of one vehicle in place of another vehicle's exhaust emission sample in order to
20 cause the Emissions Inspection System to issue certificates of compliance for the inspections
21 described in paragraphs 24-35.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Violation of Motor Vehicle Inspection Program)**

24 41. Respondent Chavez's Inspector License is subject to disciplinary action under Health
25 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a), in that
26 Respondent Chavez failed to comply with the following sections of that Code:
27
28

1 a. **Section 44012:** Respondent Chavez failed to perform the tests of the emission
2 control systems and devices on the vehicles described in paragraphs 24-35 in accordance with
3 procedures prescribed by the Department.

4 b. **Section 44015:** Respondent Chavez issued a certificate of compliance for the
5 vehicles described in paragraphs 24-35 without properly testing and inspecting them to determine
6 if they were in compliance with Health & Safety Code section 44012.

7 c. **Section 44035:** Respondent Chavez failed to meet or maintain the standards
8 prescribed for qualification, equipment, performance, or conduct by failing to properly perform
9 smog inspections on the vehicles described in paragraphs 24-35 or certifying that such tests had
10 been properly performed, when in fact they were not properly performed.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Under Motor Vehicle Inspection Program)**

13 42. Respondent Chavez's Inspector License is subject to disciplinary action under Health
14 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a) in that
15 Respondent Chavez failed to comply with the following sections of California Code of
16 Regulations, title 16:

17 a. **Section 3340.35, subdivision (c):** Respondent Chavez failed to inspect and test
18 the vehicles described in paragraphs 24-35 in accordance with the procedures specified in section
19 3340.42 of the Regulations and failed to ensure that these vehicles had all the required emission
20 control equipment and devices installed and functioning correctly.

21 b. **Section 3340.41, subdivision (c):** Respondent Chavez knowingly entered into
22 the Emissions Inspection System false information about the vehicles described in paragraphs 24-
23 35, providing passing results for smog inspections which were not properly performed.

24 c. **Section 3340.42:** Respondent Chavez failed to conduct the required smog tests
25 on all the vehicles described in paragraphs 24-35 in accordance with the Bureau's specifications.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

43. Respondent Chavez's Inspector License is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d), in that Respondent Chavez committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog inspection certificates for the vehicles described in paragraphs 24-35 without performing bona fide inspections of the emission control devices and systems on them, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

NINTH CAUSE FOR DISCIPLINE

(Clean Piping)

44. Respondent Chavez's Inspector License is subject to disciplinary action for clean piping under Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code of Regulations, title 16, section 3340.1, in that he used a substitute exhaust emission sample of one vehicle in place of another vehicle's exhaust emission sample in order to cause the Emissions Inspection System to issue certificates of compliance for the inspections of the vehicles described in paragraphs 24-35.

OTHER MATTERS

45. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this State by Respondent Regalado upon a finding that Respondent Regalado has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

46. Under Health & Safety Code section 44072.8, if Respondent Regalado's Station License is revoked or suspended, the Director may likewise revoke or suspend any additional license issued under Chapter 5 of the Health and Safety Code in the name of Respondent Regalado.

