

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

In the Matter of the Accusation Against:

**RAUL GARCIA MARQUEZ dba  
MARQUEZ SMOG AND REPAIR,**  
Automotive Repair Dealer License  
No. ARD 262688  
Smog Check Station License No.  
RC 262688

**RAUL GARCIA MARQUEZ,**  
Smog Check Inspector License No.  
EO 631345  
Smog Check Repair Technician  
License No. EI 631345

Respondent.

Case No. 79/15-134

OAH Case No. 2015090633

**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.

This Decision shall become effective July 8<sup>th</sup>, 2016.

DATED: May 24, 2016

  
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TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

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**PROPOSED DECISION**

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Fresno, California, on February 17, 2016.

Jeffrey M. Phillips, Deputy Attorney General, represented complainant Patrick Dorais (complainant), Chief, Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs (Department).

Raul Garcia Marquez (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on February 17, 2016.

**FACTUAL FINDINGS**

1. On June 23, 2015, complainant filed the Accusation in his official capacity against respondent. Respondent timely filed a notice of defense.

2. On July 19, 2010, the Bureau issued Automotive Repair Dealer License Number ARD 262688 to respondent for the facility located at 1426 North Blackstone in Fresno (respondent's facility). On August 17, 2010, the Bureau also issued Smog Check Repair Station License Number RC 262688 to respondent. Both licenses were in full force and effect at all relevant times.

3. On September 22, 2009, the Bureau issued Advanced Emission (EA) Specialist Technician (EA) License Number 631345 to respondent. Effective August 16, 2013, upon respondent's election, the license was renewed as Smog Check Inspector (EO) License and Smog Check Repair Technician (EI) License Number 631345.<sup>1</sup> Respondent's EO/EI license was in full force and effect at all relevant times.

4. There are three parts to a California Emissions Inspection Test (also called a smog inspection, smog check or smog test): (1) a tailpipe emissions test to ensure that the vehicle's emissions are reading at or below acceptable levels; (2) a visual inspection of the vehicle's emission control components to ensure that they are present, properly connected, and in good working condition; and (3) a functional test of each component that is required to be functionally tested, depending on the make and model of the vehicle. A vehicle must pass all three parts of the California Emissions Inspection Test before an Emission Inspection Certificate of Compliance may be issued. (Cal. Code Regs., §§ 3340.35, 3340.42.)

#### *Undercover Operation – May 14, 2014*

5. Jeff Vietzke is a Program Representative II in the Bureau's Fresno Documentation Lab. As part of his job duties, Mr. Vietzke prepares undercover vehicles for smog inspections and inspects and photographs those vehicles after they are returned.

6. Between April 10 and 16, 2014, Mr. Vietzke documented a 2000 Pontiac Trans Am, California license number 5GQK324, for an undercover run. The vehicle was equipped with an Air Injection Reactor (AIR) system, a required component of the emissions system. The AIR system adds oxygen which aids combustion and helps the converter heat quickly, resulting in less pollution at the engine's initial start-up. The AIR supply tubes and check valves connect the AIR system to the engine at the exhaust manifolds, and are conspicuous to the naked eye when the vehicle's hood is open. Mr. Vietzke removed the supply tubes and check valves and replaced them with a blockage plate on each exhaust manifold to prevent any exhaust from escaping and photographed the installed plates. With the supply tubes and check valves removed, and blockage plates installed, Mr. Vietzke performed a smog inspection to confirm the 2000 Pontiac Trans Am could not pass the visual inspection portion of the California Emissions Inspection Test.

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<sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30, were amended to implement a license restructure from the Advanced 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.

7. On the morning of May 14, 2014, Mr. Vietzke released the vehicle to Bureau field representatives for an undercover operation. At approximately 10:52 a.m., Jack Lewis, Program Representative I, received custody of the vehicle at the intersection of Effie and Cambridge in Fresno, California. Mr. Lewis photographed under the hood of the vehicle, confirming the removal of the AIR supply tubes and check valves, and installation of the blockage plates. At approximately 11:15 a.m., undercover operator Manuel Delafuente arrived. Mr. Lewis released the vehicle to Mr. Delafuente and instructed him to drive the vehicle to respondent's facility and request a smog inspection. Mr. Lewis also gave Mr. Delafuente cash to pay for the inspection as well as the billing notice from the Department of Motor Vehicles noting the smog check requirement.

8. At approximately 11:25 a.m., Mr. Delafuente arrived at respondent's facility and requested a smog inspection for the 2000 Pontiac Trans Am, using the assumed name Manuel Hernandez. Mr. Delafuente signed a work order but did not receive an estimate copy. Next, respondent performed the smog inspection of the vehicle. Mr. Delafuente paid \$40 in cash for the inspection. Respondent then gave Mr. Delafuente a copy of the estimate, an invoice, and the Vehicle Inspection Report (VIR), which indicated the vehicle had passed the smog check and a Certificate of Compliance was electronically transmitted to the Department of Motor Vehicles.

9. At approximately 11:50 a.m., Mr. Delafuente left respondent's facility and returned to intersection of Effie and Cambridge where he returned the vehicle to Mr. Lewis. He also initialed and dated the estimate copy, invoice, and VIR and provided them to Mr. Lewis. Mr. Lewis again took photographs under the hood of the vehicle to document the AIR supply tubes and check valves were still removed and blockage plates still in place. Mr. Lewis also initialed and dated the estimate copy, invoice, and VIR, and placed them in an envelope. He then returned the vehicle to Mr. Vietzke at the Fresno Documentation Lab.

10. Mr. Vietzke re-inspected the vehicle and verified the AIR supply tubes and check valves were missing and the blockage plates remained in place. He took photographs to document this. He then performed another smog inspection, which the vehicle failed based on the modified AIR system.

#### *Prior Citations*

11. On April 17, 2012, the Bureau issued Citation Numbers C2012-1379 and M2012-1380 to respondent against his registration and station license, and Citation Number M2012-1380 against his technician license, for issuing a Certificate of Compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation system in violation of Health and Safety Code sections 44012, subdivision (f), and 44032.<sup>2</sup> On May 10, 2012,

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<sup>2</sup> Health and Safety Code section 44012, subdivision (f) requires smog stations to perform a visual inspection of the vehicle's emission control devices and exhaust emissions as part of the smog check. Health and Safety Code section 44032 requires licensed smog technicians to perform smog checks in accordance with section 44012.

the Bureau held a Citation Conference in which respondent was advised of future undercover operations and warned of additional penalties and discipline if future violations occur. The Bureau assessed a civil penalty of \$1,000 and ordered respondent to attend an eight-hour training course. Respondent paid the penalty in full on May 17, 2012, and completed the training course on June 30, 2012.

12. On January 4, 2013, the Bureau issued Citation Number C2013-0454 to respondent against his registration and station licenses, and an Order of Abatement (Citation Number M2013-0455) against his technician license, for issuing a Certificate of Compliance to a Bureau undercover vehicle with a missing Pulsed Air Injection System in violation of Health and Safety Code sections 44012, subdivision (f), and 44032. On January 17, 2013, the Bureau held a Citation Conference wherein respondent was again advised of future undercover operations and warned of additional penalties and discipline if future violations occur. The Bureau assessed a civil penalty of \$2,000 against respondent's registration and station license. It ordered respondent to attend a 28-hour training course and pay a \$500 fine. Respondent paid the penalty and fine in full on February 6, 2013. He completed the training course on May 8, 2013.

13. On July 3, 2013, the Bureau issued Citation Number C2014-0005 to respondent against his registration and station licenses, and an Order of Abatement (Citation Number M2014-0006) against his technician license, for issuing a Certificate of Compliance to a Bureau undercover vehicle whose ignition timing was adjusted beyond the manufacturer's specification in violation of Health and Safety Code sections 44012, subdivision (f), and 44032. On August 6, 2013, the Bureau held a Citation Conference wherein respondent was again advised of future undercover operations and warned of additional penalties and discipline if future violations occur. The Bureau assessed a civil penalty of \$3,000 against respondent's registration and station license. It further ordered respondent to attend a 68-hour training course and pay a \$1,000 fine. Respondent paid the penalty and fine in full on August 21, 2013. He completed the training course on November 20, 2013.

#### *Respondent's Testimony*

14. Respondent has seven children. His son is a sergeant in the U.S. Marine Corps who has served in Iraq.

15. Respondent worked in the poultry farm business for 14 years prior to buying his auto smog and repair shop. He decided to become a mechanic because it was a better financial opportunity. Respondent attended one year at an adult school to improve his English. He then attended nine months at a community college to become a mechanic. He worked as a technician at a smog station for one and a half years before purchasing his own shop eight years ago.

16. Respondent's shop has one bay to perform smog inspections. He employs two unlicensed technicians. Respondent performs all the smog checks as he is the only licensed

technician. On average, respondent performs 20 to 30 smog inspections each week. The majority of the respondent's profit is generated by small auto repairs; smog inspections are only a small part of his business.

17. Respondent accepted responsibility for his actions, stating there was "no excuse for my mistake." Respondent explained that, in 2012 and 2013, he was dealing with a lot of stress in his personal life. His son was serving in Iraq. Respondent's brother, who was his "right hand man," died in late 2012 or early 2013. Respondent explained that the stress resulting from these events made it difficult for respondent to focus at the shop.

18. To prevent future violations, respondent testified he is in the process of hiring another licensed technician. He also began to touch each emissions component in addition to visual verification during the smog inspection. However, respondent did not begin this practice until approximately three weeks before hearing after he consulted with his former instructor.

19. Respondent is seeking "one opportunity" to keep his licenses and demonstrate his compliance with the law. He acknowledged that he has had several opportunities in the past, but requested one "last chance."

#### *Discussion*

20. The Bureau has issued Guidelines for Disciplinary Penalties and Terms of Probation (Disciplinary Guidelines), which set forth the factors in aggravation and mitigation to be considered when determining the proper penalty. The factors in aggravation include prior warnings from the Bureau, prior history of citations, prior conferences with the Bureau, prior history of formal disciplinary action, evidence that the unlawful act was part of a pattern of practice, failure to comply with Bureau requests for corrective action, and any other conduct that constitutes fraud or gross negligence. The factors in mitigation include evidence of voluntary retraining for respondent or his employees, and evidence that respondent has taken specific steps to minimize recurrence.

21. Respondent has three prior citations over a two-year period for similar violations of the Bureau's laws and regulations regarding smog inspections. For each citation, respondent attended a conference with Bureau representatives. At each of those conferences, the Bureau advised respondent that it would continue to conduct undercover operations at his shop and urged respondent to ensure he performed proper smog inspections in the future. Respondent was also warned that continuous violations of the law would result in additional civil penalties and discipline against his registration and licenses.

22. Respondent acknowledges his repeated mistakes. He fully cooperated with the fines and training required by his prior citations. Respondent has also taken some minimal steps toward correcting the deficiencies in his smog check operation. He intends to hire another licensed technician, but he has not done so in the eight months since being served with the Accusation. He implemented an additional step of touching each emissions

component during the visual inspection portion of the inspection to minimize the likelihood of a repeat violation, though he did not begin this practice until three weeks before hearing. Still, the violations found in this matter, based on a single undercover operation, are insufficient in themselves to warrant an outright revocation of respondent's registration and licenses. When all the applicable factors in aggravation and mitigation are considered in light of respondent's wrongdoing, and in order to protect the public, respondent's registration and licenses should be placed on probation for three years under the terms and conditions set forth below.

#### *Cost Recovery*

23. Pursuant to Business and Professions Code section 125.3, complainant has requested recovery of its investigation costs in the amount of \$1,676.10, and enforcement costs in the amount of \$3,532.50, for a total of \$5,208.60. This total amount consists of the following:

24. Complainant submitted a certified Statement of Costs incurred by the Bureau for its investigation costs. Business and Professions Code section 125.3, subdivision (c), permits a board or bureau seeking costs to submit a "certified copy of the actual costs." In this case, the Bureau provided its annual costs for the 2013/2014 and 2015/2016 fiscal years, but did not submit a breakdown of the time spent by the various bureau staff on this matter or provide any evidentiary support for its costs during the hearing. Consequently, it did not provide sufficient evidence of the "actual costs" as required under Business and Professions Code section 125.3, subdivision (c), to find that the amount requested is reasonable. These requested costs will, therefore, not be awarded.

25. Regarding its enforcement costs, complainant submitted a Certification of Prosecution Costs and the supporting declaration of Jeffrey M. Phillips. Attached to the declaration are printouts of documents entitled "Cost-of-Suit-Summary," and "Matter Time Activity By Professional Type." These documents describe the work performed by Mr. Phillips and a paralegal. The amount requested by the Office of the Attorney General is reasonable in light of the description of the work performed and the nature of this case.

26. At hearing, respondent did not offer any evidence suggesting he was financially unable to pay the reasonable costs of investigation and enforcement. The costs of investigation and enforcement are addressed in Legal Conclusions 20 and 21, below.

### LEGAL CONCLUSIONS

#### *Standard and Burden of Proof*

1. Complainant bears the burden of proving the allegations charged in the Accusation by a preponderance of evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

*Legal Authority*

2. Pursuant to Business and Professions Code section 9884.7, subdivision (a), the Director of the Department of Consumer Affairs (the Director) may suspend, revoke, or place on probation the registration of an automotive repair dealer, where the dealer cannot show a bona fide error, for the following acts or omissions relative to this action:

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

[¶] ... [¶]

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

(4) Any other conduct that constitutes fraud.

[¶] ... [¶]

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

3. Ordinarily, any discipline rendered for a violation applies only to the registration of the specific place of business which committed the violation. (Bus. & Prof. Code, § 9884.7, subd. (b).) However, the Director may “suspend, revoke, or place on probation, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations” of the Bureau’s statutes and regulations. (Bus. & Prof. Code, § 9884.7, subd. (c).)

4. Business and Professions Code section 9884.8 provides in relevant part:

All work done by an automotive repair dealer ... shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to 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. ... One copy of

the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

5. Business and Professions Code section 9884.9, subdivision (a) states:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be 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: "I acknowledge notice and oral approval of an increase in the original estimated price."

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

6. The expiration of a valid registration does not deprive the Director of jurisdiction to proceed with a disciplinary action against an automotive repair dealer. (Bus. & Prof. Code, § 9884.13.)

7. The Director has the power and authority under the Automotive Repair Act to enforce the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44002.) The expiration or suspension of a license does not deprive the Director of jurisdiction to take such disciplinary action. (Health & Saf., § 44072.6.)

8. The Director may suspend, revoke, or take other disciplinary action for violating the Motor Vehicle Inspection Program or related regulations, or for committing any act involving dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, § 44072.2, subd. (a), (c), (d).) Health and Safety Code section 44072.8 provides that “[w]hen a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the [D]irector.”

9. Qualified smog check technicians shall perform tests of emission control devices and systems in accordance with section Health and Safety Code section 44012. (Health & Saf. Code, § 44032.) Pursuant to section 44012, subdivision (f), the test at the smog check stations “shall be performed in accordance with procedures prescribed by the department,” which shall ensure, inter alia, that “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.” It is unlawful for a licensed smog check station to issue a Certificate of Compliance to any vehicle which does not meet the requirements of Health and Safety Code section 44012. (Health & Saf. Code, § 44012, subd. (b).)

#### *Cause for Discipline*

10. First Cause for Discipline: Cause does not exist to discipline respondent’s registration under Business and Professions Code section 9884.7, subdivision (a)(1). It was not established that respondent made untrue or misleading statements that he knew, or in the exercise of reasonable care should have known, to be untrue or misleading insofar as those statements related to the undercover vehicle’s compliance with smog regulations. Respondent made a bona fide error in performing the visual inspection portion of the smog check when he failed to notice the missing AIR supply tubes and check valves. Therefore, this charge is dismissed.

11. Second Cause for Discipline: Cause does not exist to discipline respondent’s registration under Business and Professions Code section 9884.7, subdivision (a)(4). Fraud is the willful deceit of another with the intent to induce him to enter a contract or to alter his position to his injury or risk. (Civ. Code, §§ 1572; 1709.) It was not established that respondent engaged in fraud related to the smog check he performed on the Bureau’s undercover vehicle. Respondent made a bona fide error in failing to notice the missing emissions components. Therefore, this charge is dismissed.

12. Third Cause for Discipline: Cause exists to discipline respondent's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(3). Respondent failed to provide the Bureau's undercover operator with a copy of an estimate for the smog check prior to performing the inspection.

13. Fourth Cause for Discipline: Cause exists to discipline respondent's station license because respondent issued a Certificate of Compliance for the Bureau's undercover vehicle despite his failure to perform a proper visual inspection which would have revealed the vehicle was not in compliance. (Health & Saf. Code, §§ 44012, subd. (a), (f), and (d), 44072.2, subd. (a), and 44015, subd. (b).)

14. Fifth Cause for Discipline: Cause exists to discipline respondent's station license because respondent issued a Certificate of Compliance for the Bureau's Respondent issued a Certificate of Compliance for the Bureau's undercover vehicle without conducting a proper visual inspection. (Health & Saf. Code, §§ 44072.2, subd. (c); Cal Code Regs., §§ 3340.35, subd. (c), and 3340.42.)

15. Sixth Cause for Discipline: Cause does not exist to discipline respondent's station license under Health and Safety Code section 44072.2, subdivision (d). It was not established that respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured. Respondent's representation that the Bureau's undercover vehicle was compliant was a mistake, based on his bona fide error in failing to notice the emissions system was missing AIR components. Therefore, this charge is dismissed.

16. Seventh Cause for Discipline: Cause exists to discipline respondent's smog check inspector and repair license because he failed to perform the visual inspection portion of the smog check on the Bureau's undercover vehicle. (Health & Saf. Code, §§ 44012, subd. (a) and (f), 44032, and 44072.2, subd. (a).)

17. Eighth Cause for Discipline: Cause exists to discipline respondent's smog check inspector and repair license because respondent's performed a smog check of the Bureau's undercover vehicle that was not in accordance with the Bureau's specifications. (Health & Saf. Code, § 44072.2, subd. (c); Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a), and 3340.42.)

18. Ninth Cause for Discipline: Cause does not exist to discipline respondent's inspector and repair license under Health and Safety Code section 44072.2, subdivision (d). It was not established that respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured. Respondent's representation that the Bureau's undercover vehicle was compliant was a mistake, based on his bona fide error in failing to notice the emissions system was missing AIR components. Therefore, this charge is dismissed.

19. As set forth in Finding 22, when all the applicable factors in aggravation and mitigation are considered, in order to protect the public, all of respondent's Bureau licenses, including, but not limited to, his Automotive Repair Dealer Registration Number ARD

262688, Smog Check Station License Number RC 262688, and Smog Check Inspector and Repair Technician License Number EO/EI 631345, should be placed on probation for three years under the terms and conditions set forth below.

### *Cost Recovery*

20. Business and Professions Code section 125.3 prescribes that a “licentiate found to have committed a violation or violations of the licensing act” may be directed “to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

21. In *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.4th 32, the court analyzed the award of costs under a similar provision and set forth four additional factors to be considered: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a “subjective” good faith belief in the merits of his position; (3) whether the licensee raised a “colorable challenge” to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. In applying those factors here, and based on Findings 22 through 25, it is determined that respondent shall pay the Bureau’s reasonable costs in the amount of \$3,532.50.

### ORDER

All of the registrations and licenses issued by the Bureau of Automotive Repair to respondent Raul Garcia Marquez, dba Marquez Smog and Repair, are revoked, including, but not limited to Automotive Repair Dealer Registration Number ARD 262688, Smog Check Station License Number RC 262688, and Smog Check Inspector and Repair Technician License Number EO/EI 631345; provided, however, that these revocations are stayed and the registration and licenses are placed on probation for three (3) years on the following terms and conditions:

1. During the period of probation, respondent shall:
  - (a) Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
  - (b) Respondent or respondent’s authorized representative shall report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
  - (c) Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in

any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code. 21.

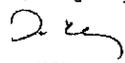
- (d) Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- (e) If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- (f) Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Director may, after giving notice and opportunity to be heard, temporarily or permanently invalidate respondent's registration and suspend or revoke respondent's licenses.

2. During the period of probation, respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, respondent's technician license shall be immediately suspended until such proof is received.

3. Respondent shall pay to the Bureau \$3,532.50 as the reasonable costs of investigation and prosecution of this case. The Bureau may establish a payment schedule for the payment of these costs over the period of probation.

4. Upon successful completion of probation, respondent's registration and licenses shall be fully restored.

DATED: March 17, 2016

DocuSigned by:  
  
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TIFFANY L. KING  
Administrative Law Judge  
Office of Administrative Hearings

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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**  
**262688**  
**Smog Check Repair Station License No. RC 262688**

18 **RAUL GARCIA MARQUEZ**  
19 **1230 West Cambridge**  
20 **Fresno, CA 93705**  
21 **Smog Check Inspector License No. EO 631345 Smog**  
22 **Check Repair Technician License No. EI 631345**  
23 **(formerly Advanced Emission Specialist Technician**  
24 **License No. EA 631345)**

25 Respondent.

Case No. 79/15-134

ACCUSATION

(SMOG CHECK)

26 Patrick Dorais ("Complainant") alleges:

27 **PARTIES**

28 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.

24 (3) Failing or refusing to give to a customer a copy of any document  
25 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 [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 [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. YF549163 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. YF549163 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 [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 [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*

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

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