

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 KEVIN W. BELL  
Deputy Attorney General  
4 State Bar No. 192063  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 210-7511  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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:

Case No.

77/17-18174

13 **DAVIS TEST ONLY SMOG TESTING,**  
**dba CITRUS HEIGHTS STAR SMOG**  
14 **DANIEL MCGARRY,**  
**aka DANIEL LAWRENCE McGARRY**  
15 **PRESIDENT/SECRETARY/TREASURER**  
**8420 Auburn Boulevard B**  
**Citrus Heights, CA 95610**  
16 **Automotive Repair Dealer Reg. No. ARD 263636**  
**Smog Check Station License No. RC 263636,**

**A C C U S A T I O N**

17 **DAVIS TEST ONLY SMOG TESTING,**  
18 **dba LINCOLN STAR SMOG**  
**DANIEL MCGARRY,**  
19 **aka DANIEL LAWRENCE McGARRY**  
20 **PRESIDENT/SECRETARY/TREASURER**  
**199 Lincoln Boulevard**  
**Lincoln, CA 95648**  
21 **Automotive Repair Dealer Reg. No. ARD 275297**  
**Smog Check Station License No. RC 275297,**

22 **DAVIS TEST ONLY SMOG TESTING,**  
23 **dba NORTH BEALE STAR SMOG**  
**DANIEL MCGARRY,**  
24 **aka DANIEL LAWRENCE McGARRY**  
25 **PRESIDENT/SECRETARY/TREASURER**  
**1152 North Beale Road, #2**  
**Marysville, CA 95901**  
26 **Mailing Address:**  
**271 Unity Circle**  
27 **Sacramento, CA 95833**  
**Automotive Repair Dealer Reg. No. ARD 278039**  
28 **Smog Check Station License No. RC 278039,**

**DANIEL LAWRENCE MCGARRY**  
**8420 Auburn Boulevard**  
**Citrus Heights, CA 95610**  
**Smog Check Inspector License No. EO 142931**  
**Smog Check Repair Technician License No. EI**  
**142931**

Complainant alleges:

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

2. On or about November 4, 2010, the Director of Consumer Affairs (“Director”) issued Automotive Repair Dealer Registration Number ARD 263636 to Davis Test Only Smog Testing (“Respondent Davis Test Only Smog Testing”), doing business as Citrus Heights Star Smog, with Daniel McGarry, also known as Daniel Lawrence McGarry (“Respondent McGarry”), as president, secretary and treasurer. The automotive repair dealer registration was in full force and effect at all times relevant to the charges brought in the Accusation and will expire on November 30, 2018, unless renewed.

3. On or about June 12, 2015, the Director issued Smog Check Station License Number RC 263636 to Respondent Davis Test Only Smog Testing, doing business as Citrus Heights Star Smog. The smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2018, unless renewed.

4. On or about January 16, 2014, the Director issued Automotive Repair Dealer Registration Number ARD 275297 to Respondent Davis Test Only Smog Testing, doing business as Lincoln Star Smog, with Respondent McGarry as president, secretary and treasurer. The automotive repair dealer registration was in full force and effect at all times relevant to the charges brought in the Accusation and will expire on January 31, 2019, unless renewed.

2

1           5.     On or about July 28, 2014, the Director issued Smog Check Station License Number  
2 RC 275297 to Respondent Davis Test Only Smog Testing, doing business as Lincoln Star Smog.  
3 The smog check station license was in full force and effect at all times relevant to the charges  
4 brought in the Accusation and will expire on January 31, 2019, unless renewed.

5           6.     On or about September 30, 2014, the Director issued Automotive Repair Dealer  
6 Registration Number ARD 278039 to Respondent Davis Test Only Smog Testing, doing business  
7 as North Beale Star Smog, with Respondent McGarry as president, secretary and treasurer. The  
8 automotive repair dealer registration was in full force and effect at all times relevant to the  
9 charges brought in the Accusation and will expire on September 30, 2018, unless renewed.

10          7.     On or about December 8, 2014, the Director issued Smog Check Station License  
11 Number RC 278039 to Respondent Davis Test Only Smog Testing, doing business as North  
12 Beale Star Smog. The smog check station license was in full force and effect at all times relevant  
13 to the charges brought in the Accusation and will expire on September 30, 2018, unless renewed.

14           **Respondent McGarry**

15          8.     In or about 2001, the Director issued Advanced Emission Specialist Technician  
16 License Number EA 142931 to Respondent McGarry. On or about June 20, 2013, the advanced  
17 emission specialist technician license was renewed as Smog Check Inspector License Number EO  
18 142931 and Smog Check Repair Technician License Number EI 142931. The smog check  
19 inspector and smog check repair technician licenses were in full force and effect at all times  
20 relevant to the charges brought in the Accusation and will expire on June 30, 2019, unless  
21 renewed.

22                           **JURISDICTION**

23          9.     Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent  
24 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
25 for enforcing the Motor Vehicle Inspection Program.

26          10.    Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
27 suspension of a license by operation of law, or by order or decision of the Director of Consumer

28    ///

1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
2 of jurisdiction to proceed with disciplinary action.

3 11. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
4 suspended following a hearing under this article, any additional license issued under this chapter  
5 in the name of the licensee may be likewise revoked or suspended by the director.

6 12. Business and Professions Code ("Bus. & Prof. Code") section 22, subdivision (a),  
7 states:

8 "Board" as used in any provision of this Code, refers to the board in  
9 which the administration of the provision is vested, and unless otherwise expressly  
10 provided, shall include "bureau," "commission," "committee," "department,"  
11 "division," "examining committee," "program," and "agency."

12 13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
13 "license" includes "registration" and "certificate."

#### 14 **STATUTORY PROVISIONS**

15 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

19 . . . .

20 (b) Is convicted of any crime substantially related to the qualifications,  
21 functions, or duties of the licenseholder in question.

#### 22 **COST RECOVERY**

23 15. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
24 the administrative law judge to direct a licensee found to have committed a violation or  
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
26 and enforcement of the case.

27 ///

28 ///

///

///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Conviction)**

3 16. Respondent Davis Test Only Smog Testing is subject to disciplinary action pursuant  
4 to Health & Saf. Code section 44072.2, subdivision (b), in that on or about June 20, 2017, in the  
5 criminal proceeding entitled *People vs. Daniel Lawrence McGarry* (Sacramento County Super.  
6 Ct., Case No. 14F05046), McGarry, Respondent's president, secretary and treasurer, was found  
7 guilty by jury trial of violating Penal Code section 245, subdivision (a)(4) (assault by means of  
8 force likely to produce great bodily injury), a felony, a crime substantially related to the  
9 qualifications, functions, or duties of an automotive repair dealer. On or about September 18,  
10 2017, the imposition of judgment and sentencing was suspended and McGarry was placed on  
11 formal probation for a period of 5 years on terms and conditions, including that McGarry seek  
12 and obtain professional counseling through and under the direction of the Probation Officer,  
13 including anger management treatment/counseling; participate in an evidence based treatment  
14 intervention program addressing criminal thinking through and direction of the probation officer;  
15 and make restitution to the victim S. S. McGarry was also ordered to serve 364 days in the  
16 Sacramento County Jail. The circumstances of the crime are set forth in paragraph 18 below.

17 17. On or about July 12, 2014, Citrus Heights Police Department officers responded to a  
18 call for a battery in progress. Dispatch further related that the victim may have suffered broken  
19 jaw bones. Upon arrival, the officers saw the victim, later identified as S. S., who was visibly  
20 dazed, had swelling to his face and was bleeding from the nose. Several individuals at the scene  
21 pointed toward the suspect's business, Citrus Heights Star Smog, and stated that the suspect was  
22 inside the facility. As Officer V. Z. approached the business, McGarry exited the facility and  
23 started aggressively walking up toward the officers. McGarry was ordered to get on the ground  
24 and he complied. Later, Officer V. Z. asked McGarry if he was the one who caused all of the  
25 injuries to the victim's face. McGarry admitted that he punched the victim in the face. McGarry  
26 stated that S. S. brought his vehicle to the facility for a smog check. S. S. returned several hours  
27 later to pick up his vehicle, and McGarry told him that it did not pass the smog inspection. S. S.  
28 was upset and stated that he did not want to pay McGarry because the vehicle did not pass the

1 smog check. McGarry told S. S. that he would not give him the keys to the vehicle until he paid  
2 McGarry the agreed upon amount. S. S. called McGarry a "Doosh" and tried to grab the keys out  
3 of McGarry's hand. McGarry refused to give S. S. the keys and placed them in his own pocket.  
4 S. S. attempted to reach in McGarry's pocket to retrieve the keys. McGarry grabbed on to S. S.'s  
5 neck and placed him in a "choke hold" using both his arms. McGarry stated that he applied  
6 enough pressure to S. S. so that S. S. could not get out of the choke hold. S. S. then grabbed  
7 McGarry's penis and squeezed it for "like a minute." McGarry released S. S. from the choke  
8 hold and started punching him in the face. McGarry admitted that he punched S. S. in the face  
9 approximately 5 times with closed fists. S. S. fell to the ground and McGarry got on top of him  
10 and "straddled him" while S. S. was on his stomach. McGarry stated that he then got off of S. S.  
11 and walked away. McGarry told Officer V. Z. that he used to be a professional boxer. S. S.'s  
12 family, which included young children, watched the entire battery take place right in front of  
13 them. S. S. sustained major facial injuries and was transported to the hospital by ambulance.

#### 14 **SECOND CAUSE FOR DISCIPLINE**

##### 15 **(Criminal Conviction)**

16 18. Respondent McGarry is subject to disciplinary action pursuant to Health & Saf. Code  
17 section 44072.2, subdivision (b), in that on or about June 20, 2017, in the criminal proceeding  
18 entitled *People vs. Daniel Lawrence McGarry* (Sacramento County Super. Ct., Case No.  
19 14F05046), Respondent was found guilty by jury trial of violating Penal Code section 245,  
20 subdivision (a)(4), a felony, a crime substantially related to the qualifications, functions, or duties  
21 of a smog check inspector and smog check repair technician, as set forth in paragraph 16 above.

#### 22 **MATTERS IN AGGRAVATION**

23 19. To determine the degree of discipline, if any, to be imposed on Respondent Davis  
24 Test Only Smog Testing, Complainant alleges as follows:

25 20. On or about May 2, 2013, the Bureau issued Citation No. C2013-0638 against  
26 Respondent, doing business as Citrus Heights Star Smog, for violating Health & Saf. Code  
27 section 44012, subdivision (f). On or about March 20, 2013, Respondent issued a certificate of  
28 compliance to a Bureau undercover vehicle with a disconnected air injection reactor (AIR) pump.

1 The Bureau assessed a civil penalty of \$1,000 against Respondent for the violation. Respondent  
2 appealed the citation on July 10, 2013. On July 22, 2014, Respondent filed a Writ of Mandate  
3 and Request for Stay. On July 24, 2014, the writ/stay was denied and the citation became final.  
4 Respondent paid the fine on September 9, 2014.

5 21. On or about January 28, 2016, the Bureau issued Citation No. C2016-0201 against  
6 Respondent, doing business as Citrus Heights Star Smog, for violating Health & Saf. Code  
7 section 44012. On or about September 5, 2015, Respondent issued a certificate of compliance to  
8 a 2002 Buick Park Avenue using a BAR97 EIS when an OIS test was required. The Bureau  
9 assessed a civil penalty of \$2,000 against Respondent for the violation. Respondent appealed the  
10 citation on February 9, 2016. The appeal is currently pending.

11 22. On or about October 25, 2016, the Bureau issued Citation No. C2016-1879 against  
12 Respondent, doing business as Lincoln Star Smog, for violating Health & Saf. Code section  
13 44012. On or about March 10, 2016, Respondent issued a certificate of compliance to a Bureau  
14 undercover vehicle with an installed unapproved aftermarket Innovative Performance Chip. The  
15 Bureau assessed a civil penalty of \$1,000 against Respondent for the violation. Respondent  
16 appealed the citation on January 4, 2017. The appeal is currently pending.

17 23. On or about March 7, 2017, the Bureau issued Citation No. C2017-585 against  
18 Respondent, doing business as North Beale Star Smog, for violating Health & Saf. Code section  
19 44012. On or about January 23, 2017, Respondent issued a certificate of compliance to a Bureau  
20 undercover vehicle with missing or modified Evaporative Emissions System components. The  
21 Bureau assessed a civil penalty of \$1,000 against Respondent for the violation. The citation  
22 became effective on June 16, 2017.

### 23 **OTHER MATTERS**

24 24. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License  
25 Number RC 263636, issued to Respondent Davis Test Only Smog Testing, doing business as  
26 Citrus Heights Star Smog, Smog Check Station License Number RC 275297, issued to  
27 Respondent Davis Test Only Smog Testing, doing business as Lincoln Star Smog, and Smog  
28 Check Station License Number RC 278039, issued to Respondent Davis Test Only Smog Testing,

1 doing business as North Beale Star Smog, are revoked or suspended, any additional license issued  
2 under this chapter in the name of said licensee may be likewise revoked or suspended by the  
3 Director.

4 25. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
5 Number EO 142931 and Smog Check Repair Technician License Number EI 142931, issued to  
6 Respondent Daniel McGarry, also known as Daniel Lawrence McGarry, are revoked or  
7 suspended, any additional license issued under this chapter in the name of said licensee may be  
8 likewise revoked or suspended by the Director.

9 **PRAYER**

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

12 1. Revoking or suspending Smog Check Station License Number RC 263636, issued to  
13 Davis Test Only Smog Testing, doing business as Citrus Heights Star Smog;

14 2. Revoking or suspending Smog Check Station License Number RC 275297, issued to  
15 Davis Test Only Smog Testing, doing business as Lincoln Star Smog;

16 3. Revoking or suspending Smog Check Station License Number RC 278039, issued to  
17 Davis Test Only Smog Testing, doing business as North Beale Star Smog,

18 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
19 and Safety Code in the name of Davis Test Only Smog Testing;

20 5. Revoking or suspending Smog Check Inspector License Number EO 142931 and  
21 Smog Check Repair Technician License Number EI 142931, issued to Daniel McGarry, also  
22 known as Daniel Lawrence McGarry;

23 6. Revoking or suspending any additional license issued under Chapter 5 of the Health  
24 and Safety Code in the name of Daniel McGarry, also known as Daniel Lawrence McGarry;

25 7. Ordering Davis Test Only Smog Testing and Daniel McGarry, also known as Daniel  
26 Lawrence McGarry to pay the Director of Consumer Affairs the reasonable costs of the  
27 investigation and enforcement of this case, pursuant to Business and Professions Code section  
28 125.3; and



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

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

DATED: May 18, 2018

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

SA2018100320