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# INVESTIGATION AND DISCIPLINE PROCESS

DEPARTMENT OF CONSUMER AFFAIRS



Bureau of Automotive Repair

BILL THOMAS  
ENFORCEMENT OPERATIONS BRANCH  
BAR ADVISORY GROUP MEETING  
JANUARY 28, 2021

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# INITIATION OF INVESTIGATION

- Field Office determines violations of the Automotive Repair Act and associated regulations have occurred. Information can come from:
  - Complaint trends revealing a pattern of violations
  - Auto Body Inspection Program
  - Anonymous tips
  - Smog Check inspection data
  - Other sources

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# INVESTIGATION PROCEDURES

- In consultation with the Field Office supervisor, the investigating Program Representative will gather evidence about violations. Techniques such as the following are employed:
  - Undercover vehicle operations
  - Video surveillance
  - Advertising review
  - Review of ARD documents

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# INVESTIGATION OUTCOMES

- Proactive Conference
  - Used when the Bureau's concerns are at a low level and the licensee can likely address through minor changes in business practices
- Office Conference
  - Used when the Bureau has more serious concerns regarding the licensee's business practices and changes must be made
- Referral to the Attorney General for the filing of an Accusation to revoke the ARD registration and/or associated licenses; or to revoke technician/adjuster licenses

# INVESTIGATION OUTCOME STATISTICS

FY 2019/20	
Proactive Conferences	371 (37%)
Office Conferences	109 (11%)
Attorney General Referrals	517 (52%)
FY 2020/21 YTD	
Proactive Conferences	217 (52%)
Office Conferences	35 (8%)
Attorney General Referrals	171 (40%)

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# SUBMITTAL TO ATTORNEY GENERAL

- Once the investigation is complete, a report is submitted to the AG Licensing Section where the following will occur:
  - Case assignment to a Deputy Attorney General (DAG)
  - DAG review for sufficient evidence to sustain an accusation
  - Prepare accusation for Bureau review
    - EOB Case Analysts compare the accusation to the investigative report for accuracy
    - Case Analyst works with the DAG to make any necessary edits

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# ACCUSATION FILING

- Once the final draft of the accusation is completed, it is presented to the Chief of the Bureau for final approval and signature.
  - Accusation is ‘filed’ when the Chief signs it
  - Signed accusation is returned to the DAG who executes service of the accusation upon Respondent
  - When served, the accusation is accompanied by several legally required documents
  - One of these documents is a blank Notice of Defense

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# ADDRESSING THE ACCUSATION

- Respondent's options once served with an accusation:
  - File Notice of Defense (NOD) within 15 days and request a hearing before an Administrative Law Judge (ALJ)
  - File NOD within 15 days and request settlement of the matter
  - Elect not to file NOD
- If NOD is not received timely, the Director will issue a Default Decision against Respondent



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# ACCUSATION RESOLUTIONS

- Default Decision
  - Occurs when Respondent fails to submit a Notice of Defense or does not appear at hearing
- Stipulated Settlement
  - Settlement of the accusation through mutual agreement between the parties (plea deal)
- ALJ Proposed Decision
  - Administrative Law Judge accepts evidence from both parties at hearing and issues a proposed decision, including proposed discipline, for the Director's review
- All of the above are subject to review and final action by the Director of Consumer Affairs or her designee

# ACCUSATION RESOLUTION STATISTICS

(Total Licenses Disciplined)

FY 2019/20	
Default Decisions	257 (16%)
Stipulated Settlements	830 (52%)
Adopted Proposed Decisions	510 (32%)
FY 2020/21 YTD	
Default Decisions	78 (20%)
Stipulated Settlements	204 (52%)
Adopted Proposed Decisions	108 (28%)

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# DISCIPLINE OUTCOMES

- Discipline is specified in the Bureau's Disciplinary Guidelines as established in regulation and generally consists of the actions below:
  - [BAR Disciplinary Guidelines](#)
  - On rare occasions, the Accusation may be dismissed or withdrawn
- Revocation
  - The registration/license is revoked and the Respondent can no longer perform automotive repair or activities applicable to the specific license (brake, lamp, and smog)
- Revocation: Stayed with probation only
  - The registration/license is revoked; however, the revocation is stayed and Respondent is placed on probation for a set period and subject to terms and conditions of probation as specified in the disciplinary order and consistent with the Disciplinary Guidelines
- Revocation: Stayed with probation and suspension
  - The registration/license is revoked: however, the revocation is stayed, Respondent is placed on probation, and the DCA issued registration/license is suspended for a period of time as specified in the disciplinary order

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# LICENSE PROBATION

- Accusations are filed to take disciplinary action against the registration or license
- If Respondent enters into settlement discussions, the Bureau will evaluate Respondent's mitigation compared to the evidence and may enter into a settlement agreement that "stays" the revocation and orders probation, with a possible suspension in some cases
  - Settlement is based on the specific circumstances of each case
- ALJs will also reference the Disciplinary Guidelines when crafting a Proposed Decision
- Per the Disciplinary Guidelines, probation is between 2 and 5 years
  - Generally speaking, the goal is for probation to be for a sufficient period for the Respondent to demonstrate compliance with BAR laws and regulations

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# LICENSE SUSPENSION

- The Disciplinary Guidelines allow for a period of suspension of the license where appropriate:
  - Limited to no less than 3 days and no more than 30 days
  - Consecutive days beginning on the Decision Effective Date
  - Suspension provides the licensee the opportunity to 'reset' business practices
  - A sign must be posted by the Bureau to notify the public of the period of suspension and reason for the suspension

# DISCIPLINE STATISTICS

(Total Licenses Disciplined)

FY 2019/20	
Revocation	1,066 (68%)
Revocation: Stayed with Probation	370 (24%)
Revocation: Stayed with Probation/Suspension	132 (8%)
FY 2020/21 YTD	
Revocation	265 (70%)
Revocation: Stayed with Probation	65 (17%)
Revocation: Stayed with Probation/Suspension	50 (13%)

# SUSPENSION STATISTICS

(Total Licenses Suspended)

FY 2019/20	
Average Days Suspension	14.55
Less than 30-Day Suspension	100
30-Day Suspension (Stipulated Settlement)	23
30-Day Suspension (ALJ Proposed)	9
FY 2020/21 YTD	
Average Days Suspension	12.80
Less than 30-Day Suspension	43
30-Day Suspension (Stipulated Settlement)	1
30-Day Suspension (ALJ Proposed)	6

# SUSPENSION STATISTICS

(Total Licenses Suspended)

FY 2019/20	
Average Days Suspension	14.55
Average Days Suspension by Stipulated Settlement	12.97
Average Days Suspension by ALJ Proposed Decision	20.69
FY 2020/21 YTD	
Average Days Suspension	12.80
Average Days Suspension by Stipulated Settlement	10.40
Average Days Suspension by ALJ Proposed Decision	27.14



# LICENSE TYPES SUSPENDED

FY 2019/20	
Automotive Repair Dealer Registration (No other license disciplined)	4
Smog Check Stations*	30
Brake and Lamp Stations*	12
Smog Check Technicians	48
Brake and Lamp Adjusters	7
FY 2020/21 YTD	
Automotive Repair Dealer Registration (No other license disciplined)	3
Smog Check Stations*	8
Brake and Lamp Stations*	8
Smog Check Technicians	15
Brake and Lamp Adjusters	8

\* ARD also was suspended in all of these disciplinary orders.

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# QUESTIONS AND COMMENTS

Submit questions and/or comments to:

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