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

In the Matter of the Accusation Against: **AUBURN SERVICE CENTER; RICHARD ANTHONY DIEBOLD, OWNER,** Auburn, CA 95602 Automotive Repair Dealer Registration No. ARD 224459 Brake Station License No. BS 224459, Class A Lamp Station License No. LS 224459, Class A and **DAVID EUGENE BROWN,** Auburn, CA 95602 Brake Adjuster License No. BA 102061, Class A Lamp Adjuster License No. LA 102061, Class A Respondents.	Case No. 77/13-26 OAH No. 2013010705

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, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors in the Proposed Decision are corrected as follows:

1. Page 2, paragraph 5, line 2: The date of "October 31, 2013" is corrected to read "October 31, 2014."
2. Page 3, paragraph 1, lines 2 and 3: The date of "October 31, 2013" is corrected to read "October 31, 2014."

This Decision shall become effective 1/6/14.

DATED: November 27, 2013

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

In the Matter of the Accusation Against: AUBURN SERVICE CENTER; RICHARD ANTHONY DIEBOLD, OWNER, Auburn, California 95602 Automotive Repair Dealer Registration No. ARD 224459 Brake Station License No. BS 224459, Class A Lamp Station License No. LS 224459, Class A And DAVID EUGENE BROWN, Auburn, California 95602 Brake Adjuster License No. BA 102061, Class A Lamp Adjuster License No. LA 102061, Class A Respondents.	Case No. 77/13-26 OAH No. 2013010705

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 3, 2013, in Sacramento, California.

Leslie A. Burgermyer, Deputy Attorney General, represented complainant Patrick Dorais, Acting Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs, State of California.

Respondent Richard Anthony Diebold represented himself and his business, Auburn Service Center.[1]

Evidence was received, the record was closed, and the matter was submitted for decision on October 3, 2013.

SUMMARY

Complaint seeks to discipline respondent's automotive repair dealer registration, brake station license, and lamp station license because respondent's brake adjuster issued official brake certificates after his brake adjuster license had expired. Cause exists to discipline respondent's automotive repair dealer registration only. When all relevant evidence is considered, it would not be contrary to BAR's duty to protect the public from unscrupulous and incompetent licensees to place respondent's automotive repair dealer registration on probation, subject to the terms and conditions specified in the Order below.

FACTUAL FINDINGS

Background

1. On November 15, 2002, BAR issued Automotive Repair Dealer Registration No. ARD 224459 (registration) to respondent Richard Anthony Diebold dba Auburn Service Center. The registration expires on October 31, 2013, unless renewed or revoked.[2] There is no history of prior discipline of the registration.

2. BAR issued respondent Lamp Station License No. LS 224459, Class A, (lamp station license) on December 18, 2002. The lamp station license expires on October 31, 2013, unless renewed or revoked.[3] There is no prior history of discipline of the lamp station license.

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[1] Shortly before the hearing in this matter, complainant reached a settlement with respondent David Eugene Brown. Therefore, this Proposed Decision pertains to Mr. Diebold and his business only.

[2] The expiration of the registration does not divest the Department of jurisdiction to discipline the registration. (Bus. & Prof. Code, § 9884.13.)

[3] The expiration of a license does not divest the Department of jurisdiction to discipline that license. (Bus. & Prof. Code, § 9889.7.)

3. BAR issued respondent Brake Station License No. BS 224459, Class A (brake station license), on September 22, 2011. The brake station license expires on October 31, 2013, unless renewed or revoked. There is no history of prior discipline of the brake station license.

BAR's Inspection of Respondent's Facility

4. On May 21, 2012, Jeffrey S. Hammer, a Program Representative I employed by BAR, conducted a periodic lamp and brake station inspection of respondent's facility. Upon his arrival at the facility, Mr. Hammer introduced himself to respondent and told respondent why he was there. He also informed respondent that respondent's brake adjuster, David Brown's, brake adjuster license had expired on January 31, 2012.

5. Respondent escorted Mr. Hammer into the repair bays, where Mr. Hammer introduced himself to Mr. Brown and stated the purpose for his visit. Mr. Brown spontaneously blurted out that his brake adjuster license had expired, and he was in the process of renewing it. He said he had submitted the renewal application and applicable fees to BAR, but had not taken the test yet.

6. Mr. Hammer asked respondent for the facility's lamp and brake certificate books for review, which respondent provided. Upon reviewing those books, Mr. Hammer discovered that Mr. Brown had issued the following brake certificates after his brake adjuster license had expired:

Brake Certificate No.	Date of Issuance	Type of Vehicle Inspected
BC 1330385	February 15, 2012	1991 Volkswagen Golf
BC 1330386	February 15, 2012	2012 "Special Construction"[4]
BC 1330387	February 16, 2012	1987 Cadillac Deville
BC 1330388	February 21, 2012	2000 Ford Windstar
BC 1330389	February 29, 2012	1997 Dodge Ram 3500 Pickup
BC 1330390	March 8, 2012	2012 "Special Construction"
BC 1330391	March 9, 2012	1989 Honda Accord LX
BC 1330392	March 12, 2012	2009 Yamaha Motorcycle
BC 1330393	March 14, 2012	2004 Chevrolet Trailblazer
BC 1330394	March 20, 2012	1990 Ford Ranger
BC 1330395	March 29, 2012	2001 Volkswagen Beetle GXL
BC 1330396	March 29, 2012	1992 Toyota Pickup
BC 1330397	April 4, 2012	2003 BMW M3
BC 1330398	April 6, 2012	2002 Acura RSX
BC 1330399	May 2, 2012	2007 Harley Davidson Road King
BC 1330400	May 4, 2012	1992 Oldsmobile Bravada

[4] At hearing, Mr. Hammer explained that "Special Construction" generally refers to a vehicle that is built by a layperson, such as cars that are made from kits.

BC 1436752	May 11, 2012	1961 Sunbeam Alpine
BC 1436754	May 15, 2012	1990 Peterbuilt Truck
BC 1436755	May 17, 2012	1999 Dodge Dakota

7. Mr. Hammer took possession of the brake certificate books which contained copies of the above certificates. And since Mr. Brown was the only brake adjuster employed at the facility, Mr. Hammer told respondent to cover all signs for official brake inspections until a licensed brake adjuster was employed at the facility. Mr. Hammer also told respondent that he had 60 days to employ a licensed brake adjuster or his brake station license would have to be surrendered. Prior to leaving the facility, Mr. Hammer asked respondent to produce copies of the invoices issued with the above brake certificates, which respondent agreed to do. The following day, Mr. Hammer returned to the facility and was provided copies of the requested invoices.

8. On June 4, 2012, Mr. Hammer contacted respondent by telephone and requested copies of the estimates issued to the customers who ultimately received the certificates identified in Factual Finding 6. Respondent provided those documents two days later.

Evidence at Hearing

9. At hearing, Mr. Hammer confirmed that his May 21, 2012 visit to respondent's facility was not made in response to any consumer complaints about the facility. In fact, he stated that he is not aware of any consumer complaints about the facility. And while Mr. Hammer said any such complaints would be investigated by a different unit in BAR than the one in which he is employed, he also said copies of any complaints would be kept in the facility's master file which he has reviewed. A reasonable inference is drawn from Mr. Hammer's testimony that BAR has not received any consumer complaints about respondent's facility. Mr. Hammer also explained that respondent was cooperative throughout his investigation.

10. Respondent testified at hearing and explained that he prides himself on providing his customers with quality work and good customer service. He is especially proud of the fact that none of his customers has ever filed a complaint about his facility with BAR, and BAR has never investigated his facility for any alleged wrongdoing. Respondent explained that he would not have allowed Mr. Brown to continue performing brake inspections had he realized Mr. Brown's brake adjuster license had expired.

11. Respondent remembered Mr. Hammer conducting his inspection of the facility on May 21, 2012. Respondent said he was "surprised" when Mr. Hammer told him Mr. Brown's brake adjuster license was expired because he recalled giving Mr. Brown time off from work specifically to take care of renewing his smog technician, lamp adjuster, and brake adjuster licenses.

12. Respondent also explained that he displays copies of Mr. Brown's licenses in a frame that is hanging on a wall in the front reception area of the facility. He testified to having a specific recollection of looking at Mr. Brown's licenses sometime after he had given Mr. Brown time off from work to renew them and noticing that the smog technician and lamp station licenses had been renewed. Respondent explained that since he knew that a licensee's brake adjuster license and lamp adjuster license generally expire at the same time and he saw Mr. Brown's renewed lamp adjuster license, he assumed that Mr. Brown had also renewed his brake adjuster license without actually looking at the expiration date on the license posted in the frame.

13. No brake inspections were performed at respondent's facility after the May 21, 2012 inspection until Mr. Brown renewed his license effective, June 14, 2012. And to prevent the loss of the ability to perform brake inspections in the future should Mr. Brown allow his brake adjuster license to expire again, respondent obtained his own brake adjuster license in July 2013. He also obtained a lamp adjuster license at the same time.

Discussion

14. The purpose of license disciplinary proceedings is to protect the public from unscrupulous and incompetent licensees. (*Sulla v. Board of Registered Nursing* (2012) 2005 Cal.App.4th 1195, 1206.) Here, respondent has operated his facility for almost nine years, and there was no evidence that he has done so in an unscrupulous or incompetent manner at any time. In fact, the evidence demonstrated otherwise. Respondent's registration and various licenses have never been disciplined, and BAR has never received any consumer complaints about his facility or conducted any investigations of the facility or any of its technicians for any alleged wrongdoing. On May 21, 2012, Mr. Hammer was conducting a periodic brake and lamp station inspection. He explained that such inspections are conducted on a random basis and are conducted to verify the facility's compliance with all statutory and regulatory requirements, such as posting the applicable licenses in plain view, having the necessary licenses, etc.

15. Respondent testified credibly and convincingly about having made a bona fide mistake by erroneously assuming that Mr. Brown had renewed his brake adjuster license at the same time he renewed his smog technician and lamp adjuster licenses. Having recalled giving Mr. Brown time off from work for the specific purpose of renewing his licenses, seeing the new expiration dates on Mr. Brown's smog technician and lamp adjuster licenses, and being aware of the fact that a person's brake adjuster license and lamp adjuster licenses generally expire at the same time; it was reasonable for respondent to have assumed Mr. Brown renewed his brake adjuster license once respondent saw the renewed smog technician and lamp adjuster licenses.

16. For the reasons discussed below, cause exists to discipline respondent's registration, but not his brake station license or lamp station license. Based on all the evidence presented, it would not be inconsistent with the Department's duty to protect the public from unscrupulous and incompetent licensees to place respondent's registration on

probation, subject to the terms and conditions specified in the Order below, and dismiss the Accusation as it pertains to respondent's brake station and lamp station licenses.

Costs of Investigation and Enforcement

17. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of $5,582.66. This amount consists of the sum of the costs incurred directly by BAR ($1,643.35) and those incurred by the Office of the Attorney General and billed to BAR ($4,415) for investigating and bringing this enforcement action against both respondent and Mr. Brown, less the amount of those costs complainant attributed to the investigation and enforcement action against Mr. Brown only ($475.69). BAR settled this matter with Mr. Brown shortly before hearing.

At the hearing, complainant introduced, without objection, a Certification of Investigative and Other Costs in support of the investigation costs incurred directly by BAR. The Certification seeks the recovery of $1,643.35 for work performed by Mr. Hammer. The Certification contains no information about the general tasks Mr. Hammer performed or the amount of time he spent on each particular task. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1) [cost declarations must include or attach sufficient information to "describe the general tasks performed, the time spent on each task and the method of calculating the cost."])

Complainant also introduced, without objection, a Certification of Prosecution Costs; Declaration of Leslie A. Burgermyer, which declares that the Office of the Attorney General incurred costs in the amount of $4,415 and billed that amount to BAR. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the amount of $4,415. Ms. Burgermyer concludes her declaration by stating that BAR is seeking cost recovery in the total amount of $5,582.66 from respondent.

Respondent offered no evidence of his inability to pay the costs requested by complainant.

In light of the issues involved in this matter and discussed in Legal Conclusion 11 below, none of the investigation costs BAR incurred directly are reasonable. Furthermore, only costs in the amount of $2,500 are reasonable for the work performed by the Office of the Attorney General.

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LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Complainant has the burden of proving the allegations in the Accusation by a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

2. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has made or authorized in any manner or by any means any written or oral statement which is untrue or misleading when the person knew, or through the exercise of reasonable care should have known, that the statement was untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) By signing each of the brake certificates identified in Factual Finding 6, Mr. Brown certified under penalty of perjury that he inspected each brake system in accordance with the Automotive Repair Act and all regulations adopted pursuant to it, including those which required him to have a brake adjuster license in order to issue such certificates. (Bus. & Prof. Code, § 9888.3 [official brake certificate must be issued by licensed brake adjuster]; Cal. Code Regs., tit. 16, § 3305, subd. (a) [accord].) But each certificate was issued after his brake adjuster license had expired and before it was renewed. (Factual Findings 4, 6, and 13.) Therefore, Mr. Brown made an untrue or misleading statement about the manner in which he inspected each brake system, being fully aware that he did not have a valid brake adjuster license, when he issued each brake certificate identified in Factual Finding 6.

While Business and Professions Code section 9884.7, subdivision (a)(1), provides an exception when the dealer can demonstrate that a bona fide error was made, such error relates to the making or authorization of the untrue or misleading statement. But the bona fide error respondent made related to his believing that Mr. Brown had renewed his brake adjuster license and allowing him to continue to perform brake adjustments after his license had expired. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 224459 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

3. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) No person may issue an official brake certificate without having a valid brake adjuster license. (Bus. & Prof. Code, § 9888.3.) And a licensee whose brake adjuster license has expired shall immediately stop issuing official brake certificates. (Bus. & Prof. Code, § 9887.1.) Mr. Brown's brake adjuster license expired on January 31, 2012, and was not renewed until June 14, 2012. (Factual Findings 4 and 13.) Nonetheless, he issued the official brake certificates identified in Factual Finding 6 during the period his license was expired. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 224459 pursuant to Business and

Professions Code section 9884.7, subdivision (a)(6), as that statute relates to Business and Professions Code sections 9887.1 and 9888.3, individually and collectively.

4. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has failed in a material manner to comply with any provision of the Automotive Repair Act or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) Work performed on a vehicle's brake system for the purpose of issuing an official brake certificate must be performed by a licensed brake adjuster. (Cal. Code of Regs., tit. 16, § 3305, subd. (a).) An official brake station shall cease performing services when it no longer has the services of a licensed adjuster. (Cal. Code of Regs., tit. 16, § 3308.) For the reasons discussed in Legal Conclusion 3, cause exists to discipline Automotive Repair Dealer Registration No. ARD 224459 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that statute relates to California Code of Regulations, title 16, sections 3305, subdivision (a), and 3308, individually and collectively.

5. A brake station license may be disciplined if the licensee or any partner, officer, or director of the licensee "violates any section of the Business and Professions Code that relates to his or her licensed activities" or "violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed. (Bus. & Prof. Code, § 9889.3, subds. (a) & (h).) Here, it was Mr. Brown who violated the Business and Professions Code by issuing brake certificates after his brake adjuster license had expired. But respondent is the holder of the brake station license, and complainant introduced no evidence that Mr. Brown was a partner, officer, or director of respondent. Therefore, no cause exists to discipline Brake Station License No. BS 224459 pursuant to Business and Professions Code, section 9889.3, subdivisions (a) or (h).

6. A brake station license may be disciplined if the licensee or any partner, officer, or director of the licensee violates any regulation adopted pursuant to the Automotive Repair Act. (Bus. & Prof. Code, § 9889.3, subd. (c).) For the reasons discussed in Legal Conclusion 5, no cause exists to discipline Brake Station License No. BS 224459 pursuant to Business and Professions Code, section 9889.3, subdivision (c).

7. Each separate automotive repair dealer registration issued to a dealer who operates multiple repair facilities in California may be disciplined if that dealer has engaged in a course of repeated and willful violations of the Automotive Repair Act or regulations adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (c).) Here, respondent did not engage in a course of repeated and willful violations of the Automotive Repair Act or regulations adopted pursuant to it. Therefore, no cause exists pursuant to Business and Professions Code section 9884.7, subdivision (c), to discipline any additional automotive repair dealer registrations issued to respondent for other facilities in California.

8. When a licensee's brake station license has been disciplined following an administrative hearing, any lamp station license issued to that same licensee may be disciplined pursuant to Business and Professions Code, section 9889.9. For the reasons

discussed in Legal Conclusions 5 and 6, individually and collectively, no cause exists to discipline Brake Station License No. BS 224459. Therefore, no cause exists pursuant to Business and Professions Code, section 9889.9 to discipline Lamp Station License No. LS 224459.

Conclusion

9. Cause exists to discipline Automotive Repair Dealer Registration No. ARD 224459 for the reasons discussed in Legal Conclusions 2, 3, and 4, individually and collectively. No cause exists to discipline Brake Station License No. BS 224459 or Lamp Station License No. LS 224459 for the reasons discussed in Legal Conclusions 5 through 6 and 8, respectively. Nor does cause exist to discipline any additional automotive repair dealer registrations issued to respondent as discussed in Legal Conclusion 7. When all the evidence is considered, it would not be contrary to BAR's duty to protect the public from unscrupulous and incompetent licensees to place Automotive Repair Dealer Registration No. ARD 224459 on probation, subject to the terms and conditions specified in the order below.

Cost Recovery

10. Business and Professions Code section 125.3 states, in pertinent part:

> (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

> Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:
>
> (1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

11. As set forth in Factual Finding 17, complainant failed to present sufficient details to support his request for investigation costs incurred directly by BAR . (Cal. Code of Regs., tit. 1, § 1042, subd. (b)(1).) Furthermore, complainant did not provide a clear allocation of the costs incurred relative to respondent and those incurred relative to Mr. Brown. A cost allocation of only $475.69 to Mr. Brown is not reasonable when BAR settled with him only shortly before the hearing. The charges against Mr. Brown and respondent are based on the same set of facts and at the very least the costs should be divided equally between them. Therefore, after considering the relevant evidence and the pertinent *Zuckerman* factors, costs in the amount of $2,500 are reasonable and are awarded as set forth in the Order below.

ORDER

1. Automotive Repair Dealer Registration No. ARD 224459 issued to respondent Richard Anthony Diebold, dba Auburn Service Center, is REVOKED; provided, however, that the revocation is immediately STAYED and the registration is placed on PROBATION for a period of two years, subject to the following terms and conditions:

a. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.

b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by BAR, 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 Decision, respondent shall report any financial interest which any partners, officers, or owners of Auburn Service Center may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

d. Respondent shall provide BAR 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 individually or dba Auburn Service Center 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 Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and/or suspend or revoke any of the licenses.

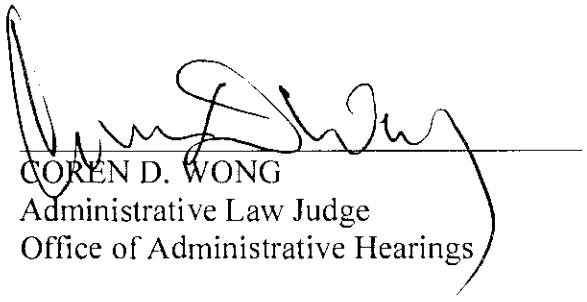
g. Upon successful completion of probation, Automotive Repair Dealer Registration No. ARD 224459 shall be fully restored.

2. The Accusation is DISMISSED as it pertains to Brake Station License No. BS 224459.

3. The Accusation is DISMISSED as it pertains to Lamp Station License No. LS 224459.

4. Respondent Richard Anthony Diebold, individually and dba Auburn Service Center, shall reimburse BAR the sum of $2,500 for costs incurred while investigating and prosecuting this matter. Respondent may pay these costs according to a payment plan approved by BAR or its designee.

DATED: October 28, 2013



COREN D. WONG
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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **AUBURN SERVICE CENTER** **RICHARD ANTHONY DIEBOLD, OWNER** 12205 Locksley Lane, #14 Auburn, CA 95602 Automotive Repair Dealer Reg. No. ARD 224459 Lamp Station License No. LS 224459, Class A Brake Station License No. BS 224459, Class A **and** **DAVID EUGENE BROWN** 12645 Shannon Lane Auburn, CA 95602 Mailing Address: 13380 Lincoln Way Auburn, CA 95603 Brake Adjuster License No. BA 102061, Class A Lamp Adjuster License No. LA 102061, Class A Respondents.	Case No. 77/13-26 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

Auburn Service Center; Richard Anthony Diebold, Owner

2. On or about November 15, 2002, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 224459 ("registration") to Richard Anthony Diebold ("Respondent Diebold" or "Diebold"), owner of Auburn Service Center. Respondent's registration will expire on October 31, 2013, unless renewed.

3. On or about December 18, 2002, the Director issued Lamp Station License Number LS 224459, class A, to Respondent Diebold. Respondent's lamp station license will expire on October 31, 2013, unless renewed.

4. On or about December 18, 2002, the Director issued Brake Station License Number BS 224459, class C, to Respondent Diebold. On September 22, 2011, Respondent applied for a class A brake station license. On October 24, 2011, the class A license was issued to Respondent. Respondent's brake station license will expire on October 31, 2013, unless renewed.

David Eugene Brown

5. In or about 1986, the Director issued Brake Adjuster License Number BA 102061, class A, to David Eugene Brown ("Respondent Brown" or "Brown"). On January 31, 2012, Respondent's brake adjuster license expired. On June 19, 2012, Respondent's brake adjuster license was renewed. Respondent's brake adjuster license will expire on January 31, 2016, unless renewed.

6. In or about 1986, the Director issued Lamp Adjuster License Number LA 102061, class A, to Respondent Brown. Respondent's lamp adjuster license will expire on January 31, 2014, unless renewed.

JURISDICTION

7. Business and Professions Code ("Code") section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

9. Code section 9889.1 provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the Automotive Repair Act.

10. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a license by operation of law or by order or decision of the Director or a court of law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any disciplinary proceedings.

STATUTORY AND REGULATORY PROVISIONS

11. Code section 9884.7 states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (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.
>
> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
>
> (c) Notwithstanding subdivision (b), 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 this chapter, or regulations adopted pursuant to it.

12. Code section 9889.3 states, in pertinent part:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director thereof:
>
> (a) Violates any section of the Business and Professions Code which relates to his or her licensed activities.
>
> (c) Violates any of the regulations promulgated by the director pursuant to this chapter.
>
> (h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed . . .

13. Code section 9887.1 states, in pertinent part:

> The director shall have the authority to issue licenses for official lamp and brake adjusting stations and shall license lamp and brake adjusters. The licenses shall be issued in accordance with this chapter and regulations adopted by the director pursuant thereto . . . Licenses may be renewed upon application and payment of the renewal fees if the application for renewal is made within the 30-day period prior to the date of expiration. Persons whose licenses have expired shall immediately cease the activity requiring a license . . .

14. Code section 9888.3 states:

> No person shall operate an "official" lamp or brake adjusting station unless a license therefor has been issued by the director. No person shall issue, or cause or permit to be issued, any certificate purporting to be an official lamp adjustment certificate unless he or she is a licensed lamp adjuster or an official brake adjustment certificate unless he or she is a licensed brake adjuster.

15. Code section 9889.9 states that "[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director."

16. Code section 22, subdivision (a), states:

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

17. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

18. California Code of Regulations, title 16, section ("Regulation") 3305, subdivision (a), states, in pertinent part, that [a]ll adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters . . . "

19. Regulation 3308 states:

> An official station shall stop performing the functions for which it has been licensed when it no longer has the services of a licensed adjuster, or when its station license has expired or has been surrendered, suspended, or revoked. The station must dispose of materials related to its formerly licensed activity according to these provisions.

(a) An official station that no longer has the services of a licensed adjuster shall immediately remove or cover the official station sign in accordance with subsection (b) of this section. If the station does not employ a licensed adjuster within 60 days, the station shall surrender its official station license to the bureau and shall return to the bureau all unused certificates of adjustments bought by the station to carry out the function for which it is no longer licensed.

(b) An official station that is no longer authorized to perform the function for which it has been licensed shall remove or cover the sign pertaining to the licensed function. A station that has a multipurpose sign shall cover those portions of the sign that pertain to the functions for which it is no; longer licensed.

(c) When an official station license has expired or has been surrendered, suspended, or revoked, the station shall return to the bureau all unused certificates purchased by the station to carry out the function for which it is no longer licensed.

COST RECOVERY

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

BACKGROUND

21. On or about May 21, 2012, a representative of the Bureau conducted a periodic lamp and brake station inspection at Respondent Diebold's facility. The representative met with Respondents Diebold and Brown and informed them of the purpose of his visit. Brown told the representative that his brake adjuster license had expired and that he had submitted the money to renew his license, but had never taken the test. The representative requested the facility's lamp and brake certificate books for review, which Diebold provided. Upon reviewing the books, the representative found that 19 brake certificates had been issued by Brown after his brake adjuster license had expired. The representative took possession of the facility's brake certificate books, containing Brake Certificate Nos. BC 1330351 to BC 1330400 and BC 1436751 to BC 1436800. The representative advised Diebold to cover all signs for official brake inspections until a licensed brake adjuster was employed at the facility. The representative also informed Diebold that the facility had 60 days from May 21, 2012 to employ a licensed brake adjuster or he must surrender his brake station license to the Bureau. On or about May 22, 2012, the representative

returned to the facility and obtained copies of the invoices for the brake certificates identified below.

Brake Certificate No.	Date of Issuance	Make/Model of Vehicle Inspected
BC 1330385	February 15, 2012	1991 Volkswagen Golf
BC 1330386	February 15, 2012	2012 "Special Cons"
BC 1330387	February 16, 2012	1987 Cadillac Deville
BC 1330388	February 21, 2012	2000 Ford Windstar
BC 1330389	February 29, 2012	1997 Dodge Ram 3500 pickup
BC 1330390	March 8, 2012	2012 "Special Cons"
BC 1330391	March 9, 2012	1989 Honda Accord LX
BC 1330392	March 12, 2012	2009 Yamaha motorcycle
BC 1330393	March 14, 2012	2004 Chevrolet Trailblazer
BC 1330394	March 20, 2012	1990 Ford Ranger
BC 1330395	March 29, 2012	2001 Volkswagen Beetle GXL
BC 1330396	March 29, 2012	1992 Toyota pickup
BC 1330397	April 4, 2012	2003 BMW M3
BC 1330398	April 6, 2002	2002 Acura RSX
BC 1330399	May 2, 2012	2007 Harley Davidson Roadking
BC 1330400	May 4, 2012	1992 Oldsmobile Bravada
BC 1436752	May 11, 2012	1961 Sunbeam Alpine
BC 1436754	May 15, 2012	1990 Peterbilt truck
BC 1436755	May 17, 2012	1999 Dodge Dakota

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

22. Respondent Diebold's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Diebold's technician, Respondent Brown, certified under penalty of perjury on the brake certificates, identified in paragraph 21, above, that he performed the applicable inspections of the brake systems on the vehicles (described in the certificates) as specified by the Bureau and in accordance with Title 16 of the California Code of Regulations and the Business and Professions Code. In fact, Respondent Brown issued the certificates when his brake adjuster license had expired, in violation of Code sections 9887.1 and 9888.3 and Regulation 3305, subdivision (a).

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SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

23. Respondent Diebold's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with sections 9887.1 and 9888.3 of that Code in the following material respects: Respondent Diebold continued to issue brake certificates despite the fact that his technician, Respondent Brown's brake adjuster license had expired on January 31, 2012, as set forth in paragraph 5 above.

THIRD CAUSE FOR DISCIPLINE

(Violations of Regulations)

24. Respondent Diebold's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305, subdivision (a):** Respondent Diebold continued to issue brake certificates despite the fact that his technician Respondent Brown's brake adjuster license had expired on January 31, 2012.

b. **Section 3308:** Respondent Diebold continued to perform his official functions as a brake station, including issuing brake certificates, even though his technician Respondent Brown's brake adjuster license had expired on January 31, 2012.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

25. Respondent Diebold's brake station license is subject to disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the provisions of Code sections 9887.1 and 9888.3 relating to its licensed activities, as set forth in paragraph 23 above.

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FIFTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

26. Respondent Diebold's brake station license is subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with Regulations 3305, subdivision (a), and 3308, as set forth in paragraph 24 above.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

27. Respondent Brown's brake adjuster license is subject to disciplinary action pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the provisions of Code sections 9887.1 and 9888.3 relating to his licensed activities, as set forth in paragraph 23 above.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

28. Respondent Brown's brake adjuster license is subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with Regulation 3305, subdivision (a), as set forth in paragraph 24 above.

OTHER MATTERS

29. Pursuant to 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 Richard Anthony Diebold, owner of Auburn Service Center, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

30. Pursuant to Code section 9889.9, if Brake Station License Number BS 224459, issued to Respondent Richard Anthony Diebold, owner of Auburn Service Center, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee, including, but not limited to, Lamp Station License Number LS 224459, may be likewise revoked or suspended by the Director.

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31. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 102061, issued to Respondent David Eugene Brown, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Code in the name of said licensee, including, but not limited to, Lamp Adjuster License Number LA 102061, may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 224459, issued to Richard Anthony Diebold, owner of Auburn Service Center;

2. Revoking or suspending any other automotive repair dealer registration issued to Richard Anthony Diebold;

3. Revoking or suspending Brake Station License Number BS 224459, issued to Richard Anthony Diebold, owner of Auburn Service Center;

4. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Richard Anthony Diebold, including, but not limited to, Lamp Station License Number LS 224459;

5. Revoking or suspending Brake Adjuster License Number BA 102061, issued to David Eugene Brown;

6. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of David Eugene Brown, including, but not limited to, Lamp Adjuster License Number LA 102061;

7. Ordering Richard Anthony Diebold, owner of Auburn Service Center, and David Eugene Brown to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/21/12

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant