

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

In the Matter of the Statement of Issues
Against:

FEDERICO ROBERTO LATORRE
doing business as LA SMOG CENTER,

Respondent.

Case No. 77/15-66s

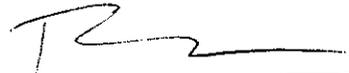
OAH No. 2015070497

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 2/24/16

DATED: December 24, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

BEFORE THE
BUREAU OF AUTOMOTIVE REPAIR
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Case No. 77/15-66S

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PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on October 13, 2015.

Kevin J. Rigley, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs. Respondent Federico LaTorre doing business as LA Smog Center represented himself.

Complainant alleges that respondent's history of regulatory discipline disqualifies respondent from obtaining a Brake Station License and a Lamp Station license. Respondent disputes the allegation and offers evidence of his rehabilitation.

Testimonial and documentary evidence was received and the matter was submitted for decision on October 13, 2015. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

FACTUAL FINDINGS

1. Complainant made the Statement of Issues in his official capacity.
2. On March 21, 2014, respondent filed applications with the Bureau for licensure a Brake Station License and a Lamp Station License. On April 7, 2014, the Bureau denied the applications. On May 29, 2014, respondent requested a hearing. This proceeding ensued. All jurisdictional requirements have been met.

Cause for Denial of Licensure

3. a. In the disciplinary action titled *In The Matter of the Accusation Against LA Smog Center; Federico LaTorre, Owner*, case number 77/08-22, the Bureau issued a Default Decision and Order (Default Decision and Order), effective March 30, 2010, which revoked Brake Station License No. BS 224922-C, Lamp Station License No. LS 224922-A, and Brake Adjuster License No. BA 134462-A issued to respondent. These licenses have never been reissued to respondent.

b. The Default Decision and Order further revoked Automotive Dealer Registration No. ARD 224922, Smog Check Station License No. RC 224922 and Advanced Emission Specialist Technician No. EA 134462 issued to respondent. The revocation of these licenses, however, was stayed, and these licenses were placed on probation for a term of three years on certain terms and conditions including completing a Bureau-certified, eight-hour citation class and paying a cost recovery amount of \$6,000. (See Exhibit 4.)

c. Respondent has fulfilled all the terms and conditions of his three-year probation.

4. a. The facts and circumstances surrounding the Bureau's prior discipline of respondent are set forth in the October 23, 2008 Accusation referenced by and incorporated in the Default Decision and Order. The October 23, 2008 Accusation alleges that respondent violated Business and Professions Code sections 9884.7, subdivisions (a) (1) (making false and misleading statements), (a)(4) (fraud), (a)(6) (failure to comply with provisions of the Automotive Repair Act), (a)(9) (unauthorized sublet of repairs) and 9889.3, subdivisions (a) (failure to comply with the Business and Professions Code), (c) (failure to comply with California Code of Regulations), and (d) (dishonesty, fraud, or deceit).

b. In particular, the October 23, 2008 Accusation alleges in pertinent part the following:

UNDERCOVER OPERATION #1: 1991 BUICK CENTURY

27. On October 23, 2007, an undercover operator with the Bureau, using the fictitious name "Manny Garcia" (hereinafter "operator") took the Bureau's 1991 Buick Century to Respondent's facility and requested a brake and lamp inspection for a salvaged vehicle. The rear brake drums on the Bureau-documented vehicle were machined beyond the manufacturer's drum discard diameter specifications, the left headlamp was out of adjustment, and the back-up lamps were not functioning. Respondent told the operator that the inspection cost \$90. The operator signed and received a copy of a written estimate. Respondent placed a headlamp aimer in front of the head lamps, then

drove the vehicle out of the shop. Respondent returned after a few minutes and told the operator that he was out of lamp certificates. Respondent stated that he needed to go and "get one," which would take about 30 minutes. The operator agreed to wait. Respondent drove off in the vehicle and returned after approximately 30 minutes. The operator paid Respondent \$90 in cash and received copies of Certificate of Brake Adjustment Number [REDACTED] issued by Respondent and Certificate of Lamp Adjustment Number [REDACTED] issued by another automotive repair facility, LA Auto Repair, located in Los Angeles, California. The operator was not given a final invoice.

28. Later that same day, a representative of the Bureau inspected the vehicle and found that the rear brake drums were not within manufacturer's specifications, the wheels and rear brake drums had not been removed to check the brake fluid level, the left headlamp was still out of adjustment, and the back-up lights were still not functioning.

[REDACTED]

UNDERCOVER OPERATION #2: 1987 OLDSMOBILE DELTA 88

39. On November 27, 2007, the operator, using the fictitious name "Manny Garcia," took the Bureau's 1987 Oldsmobile Delta 88 to Respondent's facility and requested a brake and lamp inspection for a salvaged vehicle. The rear brake drums on the Bureau-documented vehicle were machined beyond the manufacturer's drum and discard diameter specifications, the left headlamp was out of adjustment, and the left rear side clearance lamp was not functioning. Respondent's employee, whose identity is presently unknown to the Bureau, had the operator complete and sign a work order for the inspection, then gave the operator a copy. The employee asked the operator for the DMV paperwork. After approximately 15 minutes, the employee filled out the brake and lamp certificates. The operator paid the employee \$90 in cash and received copies of an invoice, Certificate of Brake Adjustment Number [REDACTED], and Certificate of Lamp Adjustment Number LC [REDACTED]. The employee signed the certificates and using Respondent's name and brake and lamp adjuster numbers. As the operator paid for the certificates, he observed Respondent at the facility. During the entire time the operator was at the facility, he never observed Respondent or the employee inspect or road test the vehicle.

40. Later that same day, a representative of the Bureau inspected the vehicle and found that the rear brake drums were not within manufacturer's specifications, the wheels and rear brake drums had not been removed to inspect the brakes, the left headlamp was still out of

adjustment, and the left rear side clearance lamp was still not functioning.

[¶ . . . ¶]

UNDERCOVER OPERATION #3: 2000 TOYOTA TACOMA

48. On February 5, 2008, the operator, using the fictitious name "Manny Garcia," took the Bureau's 2000 Toyota Tacoma to Respondent's facility and requested a brake and lamp inspection for a salvaged vehicle. The rear brake drums on the Bureau-documented vehicle were machined beyond the manufacturer's drum discard diameter specifications, the left headlamp was out of adjustment, and defective lamps had been installed in the back up lights, preventing them from functioning. Respondent pulled the vehicle halfway into the first stall, turned the lights on, and went around the vehicle. Respondent then drove the vehicle off the premises, and returned after approximately fifteen minutes. The operator signed and received a copy of an invoice, paid Respondent \$85, and received copies of Certificate of Brake Adjustment Number [REDACTED] and Certificate of Lamp Adjustment Number [REDACTED].

49. Later that same day, a representative of the Bureau inspected the vehicle and found that the rear brake were not within manufacturer's specifications, the wheels and rear brake drums had not been removed to inspect the brakes, the left head lamp was still out of adjustment, and the back-up lamps were not functioning. (Exhibit 4.)

Factors in aggravation, mitigation, and rehabilitation

5. During the administrative hearing, respondent admitted that, in connection with the first undercover operation, he "overlook[ed] the car" because "too many ears" were on the rack. He testified, "I accept my error. I didn't overcharge. I didn't say give me more money and you will pass." Respondent addressed the second undercover operation by asserting that he now monitors his employees to "check that the job is 100 percent done." With respect to the third undercover operation, respondent asserted that "at the time [he] had so many tests to do," he never inspected the vehicle: "I didn't do the inspection; I didn't put it in the drum machine."

6. Respondent testified, "I changed all my regulations in my shop." Respondent claims that for tune-ups he now looks at the parts, and that for brake jobs he now inspects the brakes to make sure they are done well. Respondent additionally testified that he understands the rules and regulations of his job. "I can't just touch

my heart and do a job for a guy. It is very important to follow stipulations. I learned the bad way, but I learned."

7. Respondent offered letters from several of his clients, all of whom expressed appreciation for respondent's fair and honest treatment in connection with his service of their vehicles. The letters indicate that respondent's clients generally regard him as a "generous mechanic." Respondent's clients authoring the letters did not indicate whether respondent repaired the brakes or lamps of their vehicles. (Exhibits A and B.)

LEGAL CONCLUSIONS

1. Business and Professions Code section 9889.1 provides, in pertinent part, that the Director of Consumer Affairs (Director) for the Bureau may refuse to issue a license to any applicant for the reasons set forth in section 9889.2.

2. Business and Professions Code section 9889.2 provides, in pertinent part, the following:

The director may deny a license if the applicant . . . does any of the following:

[¶] . . . [¶]

(b) Was previously the holder of a license issued under this chapter, which license has been revoked and never reissued or which license was suspended and the terms of the suspension have not been fulfilled.

(c) Has committed any act that, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefitted.

5. With respect to the First Cause for Denial of Application, cause exists to deny respondent's March 21, 2012 applications for Brake Station License and Lamp Station License pursuant to Business and Professions Code sections 9889.1 and 9889.2, in that, as set forth in Factual Findings 4a and 4b, respondent committed acts, which if committed by a licensee would be grounds for license suspension or revocation.

6. With respect to the Second Cause for Denial of Application, cause exists to deny respondent's March 21, 2012 applications for Brake Station License

and Lamp Station License pursuant to Business and Professions Code sections 9889.1 and 9889.2, in that, as set forth in Factual Findings 4a and 4b, respondent committed acts involving dishonesty, fraud, or deceit with the intent of substantially benefiting himself.

7. With respect to the Third Cause for Denial of Application, cause exists to deny respondent's March 21, 2012 applications for Brake Station License and Lamp Station License pursuant to Business and Professions Code sections 9889.1 and 9889.2, in that, as set forth in Factual Finding 3a, Brake Station License No. BS 224922-C, Lamp Station License No. LS 224922-A, and Brake Adjuster License No. BA 134462-A previously issued to respondent have been revoked and have never been reissued.

8. All evidence presented in aggravation, mitigation and rehabilitation has been considered in light of the Bureau's *Guidelines for Disciplinary Penalties and Terms of Probation* (May 1997), which was enacted pursuant to California Code of Regulations, title 16, section 3395.4. Respondent's admitted misconduct detailed in the October 23, 2008 Accusation more than suggest a pattern of practice. In no less than three instances, respondent doing business as LA Smog Center purported to inspect and repair the malfunctioning brake and lamps of vehicles when in fact no inspection or repair ever occurred. Respondent undermined public safety and welfare by certifying those vehicles as safe when in fact the vehicles were unsafe and therefore presented a threat of harm to any person operating them as well as to the public. Respondent's subsequent pledge during the course of the hearing to adhere to the Bureau's rules and regulations appears hollow since that is exactly what was expected of him in the first place, and he offered no compelling explanation for why his conduct was incongruous with the duties the law imposes on him as a Bureau licensee. Respondent's testimony and reference letters from clients were not sufficient to overcome the gravity of respondent's misconduct.

9. An administrative proceeding such as this is not penal in nature; its purpose is not to impose additional punishment. Rather, its purpose is to protect the public from dishonest, disreputable, or incompetent practitioners such as respondent. (See e. g. *Camacho v. Youde* (1979) 95 Cal. App. 3d 161, 164.) Under all the facts and circumstances, the order that follows is necessary for the protection of the public.

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ORDER

The applications of respondent Federico Roberto LaTorre doing business as LA Smog Center for a Brake Station License and a Lamp Station License are denied.

DATED: November 16, 2015

DocuSigned by:

C2CF32333C46434

JENNIFER M. RUSSELL
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**

11 In the Matter of the Statement of Issues
12 Against:

Case No. 17/15-668

13 **FEDERICO LATORRE, OWNER,**
14 **DBA LA SMOG CENTER;**

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Patrick Dorais (Complainant) brings this Statement of Issues solely in his official
20 capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer
21 Affairs.

22 2. On or about March 21, 2014, the Bureau of Automotive Repair received separate
23 applications for a Brake Station License and a Lamp Station License (applications) from Federico
24 Roberto Latorre dba LA Smog Center (Respondent). On or about March 14, 2014, Federico
25 Roberto Latorre certified under penalty of perjury to the truthfulness of all statements, answers,
26 and representations in the applications. The Bureau denied both applications on April 7, 2014.

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1 On or about May 29, 2014, the Bureau received Respondent's appeal regarding the denial of his
2 applications.

3 LICENSE HISTORY

4 **Automotive Repair Dealer Registration No. ARD 224922**

5 3. On or about January 30, 2003, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 224922 to Respondent. On or about March 30, 2010, the registration
7 was revoked. However, the revocation was stayed and the registration was placed on probation
8 for a period of three (3) years under certain terms and conditions, as more particularly set forth in
9 the Stipulated Settlement and Disciplinary Order attached hereto and incorporated herein as
10 **Exhibit A**. The registration will expire on November 30, 2015, unless renewed.

11 **Smog Check Station License No. RC 224922**

12 4. On or about February 3, 2003, the Bureau issued Smog Check Station License
13 Number RC 224922 to Respondent. On or about March 30, 2010, the smog check station license
14 was revoked. However, the revocation was stayed and the smog check station license was placed
15 on probation for a period of three (3) years under certain terms and conditions, as more
16 particularly set forth in the Stipulated Settlement and Disciplinary Order attached hereto and
17 incorporated herein as **Exhibit A**. The smog check station license will expire on November 30,
18 2015, unless renewed.

19 **Advanced Emission Specialist Technician License No. EA 134462**

20 5. In 1997, Advanced Emission Specialist (EA) Technician License No. 134462 (smog
21 technician license) was issued to Respondent. On or about March 30, 2010, the smog technician
22 license was revoked. However, the revocation was stayed and the smog technician license was
23 placed on probation for a period of three (3) years under certain terms and conditions, as more
24 particularly set forth in the Stipulated Settlement and Disciplinary Order attached hereto and
25 incorporated herein as **Exhibit A**. The smog technician license, which was due to expire on April
26 30, 2013, was cancelled on March 29, 2013. Pursuant to California Code of Regulations, title 16,
27 section 3340.28, subdivision (e), the smog technician license was renewed, pursuant to
28 Respondent's election, as Smog Check Inspector License Number EO 134462 and Smog Check

1 Repair Technician License Number EI 134462 (technician licenses), effective March 29, 2013.
2 Respondent's technician licenses will expire on April 30, 2017, unless renewed.¹

3 **Lamp Station License No. LS 224922**

4 6. On or about February 7, 2003, the Bureau issued Lamp Station License Number LS
5 224922, class A (lamp station license), to Respondent. On or about March 30, 2010, the lamp
6 station license was revoked, as more particularly set forth below in paragraphs 10 and 11.

7 **Brake Station License No. BS 224922**

8 7. On or about February 7, 2003, the Bureau issued Brake Station License Number BS
9 224922, class C (brake station license), to Respondent. On or about March 30, 2010, the lamp
10 station license was revoked, as more particularly set forth below in paragraphs 10 and 11.

11 **Lamp Adjuster License No. LA 134462**

12 8. In 1997, the Bureau issued Lamp Adjuster License Number LA 134462, class A
13 (lamp adjuster license), to Respondent. The lamp adjuster license will expire on April 30, 2016,
14 unless renewed.

15 **Brake Adjuster License No. BA 134462**

16 9. In 1997, the Bureau issued Brake Adjuster License Number BA 134462, class A
17 (brake adjuster license), to Respondent. On or about March 30, 2010, the brake adjuster license
18 was revoked, as more particularly set forth below in paragraphs 10 and 11.

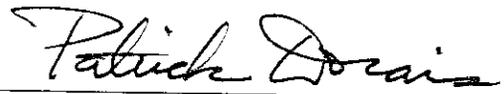
19 **PRIOR DISCIPLINE**

20 10. On or about October 23, 2008, Accusation No. 77/08-22 was filed, alleging that
21 Respondent violated Business and Professions Code (Code) sections 9884.7(a)(1) [making false
22 and misleading statements]; 9884.7(a)(4) [fraud]; 9884.7(a)(6) [failed to comply with provisions
23 of the Automotive Repair Act]; 9884.7(a)(9) [unauthorized sublet of repairs]; 9889.3(a) [failure to
24 comply with the Business and Professions Code]; 9889.3(c) [failure to comply with California
25 Code of Regulations]; and 9889.3(d) [dishonesty, fraud, or deceit].

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

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

DATED: June 23, 2015



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

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