

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

In the Matter of the Accusation Against:

**ALCHI, INC., dba
PATRIOT AUTO CARE AND BRAKES,
Wathiq N. F. Alchi, President,**

ARD Registration No. ARD 253302
Smog Station License No. RC 253302
Lamp Station License No. LS 253302
Brake Station License No. BS 253302

and

J. ALBERTO GURROLA

Advanced Emission Specialist Technician
License No. EA 108157

Respondents.

Case No. 79/13-76

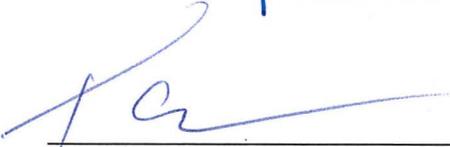
OAH No. 2013060970

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 January 8, 2015.

DATED: November 26, 2014



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on September 9, 2014.

Rita M. Lane, Deputy Attorney General, Department of Justice, State of California, represented complainant, John Wallauch, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California.

Wathiq N. F. Alchi, appeared on his own behalf and on behalf of respondent corporation, Alchi, Inc. Ronald L. Rockwell, Attorney at Law, assisted Mr. Alchi, but did not formally represent Mr. Alchi or respondent corporation.

No appearance was made by or on behalf of respondent, J. Alberto Gurrola, whose case was settled before the hearing.

During the hearing, complainant withdrew all allegations related to the sixth through ninth causes for discipline concerning an undercover operation occurring on April 5, 2012.

The matter was submitted on September 9, 2014.

SUMMARY

On March 8, 2012, respondent corporation conducted a smog check inspection of a 1990 Toyota Celica. The only repair necessary for the Toyota to pass a properly conducted smog check inspection was the replacement of a defective vacuum hose connected to the manifold's absolute pressure sensor. Respondent corporation's employee replaced the defective vacuum hose but also replaced the Toyota's oxygen sensor and three other vacuum hoses. Replacement of the oxygen sensor and the other vacuum hoses was not required for the Toyota to pass a properly conducted smog check inspection.

On May 8, 2012, respondent corporation conducted a smog check inspection of a 1992 Chevrolet Caprice. The only repair necessary for the Chevrolet to pass a properly conducted smog check involved the repair of defective wiring of the air injection reactor. Respondent corporation's employee repaired the wiring defect but also cleaned and billed for the cleaning of exhaust gas recirculation (EGR) passages. Cleaning the EGR passages was not necessary for the Chevrolet to pass a properly conducted smog check inspection.

While some violations of law were proven that justify the imposition of discipline, a preponderance of the evidence did not establish that respondent corporation engaged in dishonesty or fraud. Respondent corporation established that its employee made simple, good faith mistakes in the diagnosis and repair of the 1990 Toyota and the 1992 Chevrolet and that respondent corporation did not know about those mistakes and could not have known about those mistakes in the exercise of reasonable care.

Under all the circumstances, suspending the registration and smog check station license issued to Patriot Auto Care and Brakes for a period of 90 days, staying the suspension and placing Patriot Auto Care and Brakes on probation for a period of two years on appropriate terms and conditions of probation will protect the public.

FACTUAL FINDINGS

California's Clean Air Legislation and Smog Check Inspections

1. The California Legislature enacted clean air legislation to reduce toxic emissions that result from the operation of motor vehicles. This legislation requires every motor vehicle registered in California to pass a smog check inspection upon change of ownership and to undergo an inspection every two years in areas subject to the biennial smog certification program.

A licensed smog check station causes an electronic certificate of compliance to be issued when the vehicle being tested passes a smog check inspection. When the vehicle does not pass an inspection, it must be repaired and retested. A certificate of compliance should not be issued until a vehicle passes a properly conducted inspection. Only a licensed smog check technician working at a licensed smog check station is permitted to conduct a smog check inspection, which is accomplished by using a computer-based device known as an emission inspection system (EIS). Each EIS has a unique identification number. Each EIS is capable of going online with a statewide database. Information entered into an EIS concerning a smog check inspection is stored immediately in the EIS and in the statewide database. The Bureau of Automotive Repair (BAR or Bureau) has access to the statewide database.

An EIS is activated when a licensed smog check technician enters a unique personal identification number and his or her license number. Thereafter, the licensed smog check technician inputs information pertaining to the identity of the vehicle being inspected.

After required vehicle identification information is entered, the EIS prompts the smog check technician to insert a diagnostic probe into the tailpipe of the vehicle being inspected. Exhaust emissions are measured while the vehicle is running at various speeds.

After information concerning engine emissions is gathered, the EIS leads the technician through a visual inspection of the vehicle in which the technician visually confirms that all required emission control systems and devices are present. During the inspection, the EIS prompts the technician to inspect and confirm the presence of certain required emission system components. During the visual inspection, the technician enters into the EIS his or her observations concerning the presence of required emission control systems and devices in response to a series of prompts.

After the results of the visual inspection are reported, the EIS leads the licensed smog check technician through functional tests of various emission control devices, the results of which are entered into the EIS following a series of prompts.

When a smog check inspection is completed, the EIS generates a written report – known as a vehicle inspection report (VIR) – that contains a description of the vehicle that was tested and the results of the testing and inspections. If the vehicle passes the smog check inspection, an electronic certificate of compliance is issued automatically to the California Department of Motor Vehicles. If the vehicle does not pass the smog check inspection, the vehicle must be repaired and retested.

License Histories

2. The Bureau issued ARD Registration No. ARD 253302 to respondent corporation, Alchi, Inc., doing business as Patriot Auto Care and Brakes, on January 18, 2008. Wathiq N. F. Alchi is President of Alchi, Inc.

The Bureau issued Smog Check Station License No. RC 253302 to respondent corporation, a test and repair facility, on February 26, 2010.

The Bureau issued Lamp Station License No. LS 253302, Class A, to respondent corporation on June 28, 2012.

The Bureau issued Brake Station License No. BS 253302, Class C, to respondent corporation on June 28, 2012.

Respondent corporation's registration and licenses are current. There is no history of any prior discipline having been imposed upon respondent corporation's registration or licenses.

3. The Bureau issued Advanced Emission Specialist Technician License No. EA 108157 to respondent, J. Alberto Gurrola, who was employed by Alchi, Inc. at all times relevant to this matter. Mr. Gurrola entered into a settlement with the Bureau before the hearing in this matter commenced. Mr. Gurrola did not testify in this matter.

The March 8, 2012, Undercover Investigation

4. On March 8, 2012, the BAR conducted an undercover investigation at Patriot Auto Care and Brakes using a specially prepared 1990 Toyota Celica.

From January 13 through 20, 2012, BAR Program Representative Daniell J. Rogers, a highly trained mechanic and an expert in the field of smog check inspections, conducted an inspection of a 1990 Toyota Celica at the Bureau's Fontana documentation lab. He confirmed that the vehicle contained functioning emission control systems and all required emission control devices and that it could pass a properly conducted smog check inspection.

On January 20, 2012, Mr. Rogers produced a vacuum leak in the manifold's absolute pressure sensor hose, which created an overly rich fuel condition that caused the 1990 Toyota to fail the engine emissions test due to excessive Carbon Monoxide (CO) emissions. Mr. Rogers installed tamper indicators throughout the engine to determine what kind of repair work, if any, was performed. He photographed the tamper indicators. He test drove the Toyota and documented the odometer reading at the conclusion of the test drive.

On March 8, 2012, Mr. Rogers transported the 1990 Toyota from Fontana to National City, where he transferred custody of the Toyota to Program Representative Robert Cassel. He noted the odometer reading at the time of that transfer.

After Mr. Cassel took custody of the 1990 Toyota, he released custody of it to Ignacio Villegas, a Bureau undercover operative. He instructed Mr. Villegas to drive the Toyota to Patriot Auto, use the fictitious name Ignacio Flores, and request a smog check inspection. Mr. Cassel told Mr. Villegas to bring back any documentation he was given relating to the

inspection. Mr. Villegas left on the undercover run around 9:15 a.m. He drove the vehicle to Patriot Auto and requested a smog check inspection.

Mr. Cassel received a telephone call from Mr. Villegas around 10:30 a.m. Mr. Villegas told him there would be a delay while an emission problem was being diagnosed. It is more likely than not that Patriot Auto completed a smog check inspection and the 1990 Toyota failed that inspection before Mr. Villegas telephoned Mr. Cassel.

On March 9, 2012, Mr. Villegas regained custody of the 1990 Toyota from Patriot Auto. He was given a VIR that indicated the 1990 Toyota passed a smog check inspection conducted on May 8, 2012, at 4:02 p.m., along with an invoice for repairs made by Patriot Auto to enable the 1990 Toyota to pass the inspection. Mr. Villegas drove the Toyota back to the location where Mr. Cassel was waiting. Mr. Villegas gave Mr. Cassel the VIR and the invoice. Mr. Cassel noted the odometer reading.

The VIR stated that EGR vacuum routing had been repaired, that secondary timing had been repaired, and that an oxygen sensor had been replaced.

The invoice was dated March 9, 2012. It stated that a smog check inspection was performed, that the vehicle had failed due to "CO (%)," and that Patriot Auto "R/R [removed and replaced] O2 sensor and vacuum hoses." The invoice charged \$136.35 for parts, including an oxygen sensor and a vacuum hose, and \$174.75 for labor.

After the undercover run, the 1990 Toyota was transported back to the Bureau's Fontana documentation lab where Mr. Cassel regained custody of it. He was also provided with a copy of the passing VIR and a copy of the invoice related to the March 8 and 9, 2012, testing and repair of the Toyota.

On March 14, 2012, Mr. Rogers reinspected the 1990 Toyota. It passed a properly conducted smog check inspection. The defective manifold sensor hose had been replaced. Other hoses that connected the throttle body to the EGR vacuum modulator also had been replaced. Tamper indicators were disturbed in a manner that was consistent with the replacement of the oxygen sensor. The ignition timing was properly set.

5. The foregoing information was carefully documented in declarations and reports prepared by BAR employees as a part of their official duties. Other information was obtained directly from the Vehicle Inspection Report, the statewide data base, and Patriot Auto's invoice. Ignacio Villegas, who was not a regular Bureau employee, did not testify. Respondent requested cross-examination of Mr. Villegas when respondent was served with Mr. Villegas's declaration. Mr. Villegas was not produced in response to that request. Mr. Villegas's declaration was hearsay and was insufficient, by itself, to support a finding of fact, but it could be used to supplement and explain other factual findings that were supported by non-hearsay evidence.

Mr. Alchi's Testimony

6. Mr. Alchi had no personal knowledge concerning the inspection or repair of the 1990 Toyota. He did not provide Mr. Gurrola with supervision or assistance.

Factual Conclusions – March 8, 2012, Undercover Operation

7. Although there was no direct testimony that established that Mr. Gurrola told the undercover operator that the oxygen sensor and vacuum hoses needed to be replaced, the circumstantial evidence established that was the case. Mr. Gurrola's precise reasoning in reaching the conclusion that the oxygen sensor and four vacuum hoses needed to be replaced was not established, but there is no doubt that he replaced the oxygen sensor and four vacuum hoses.

The manifold sensor hose was defective at the time of Mr. Gurrola's inspection, and it would not be unreasonable for Mr. Gurrola to have concluded that other emission-related hoses in and about the area of the manifold sensor hose were the same age and condition and also needed to be replaced. The fact that the oxygen sensor and vacuum hoses actually were replaced was persuasive evidence that Mr. Gurrola believed they needed replacement. Patriot Auto did not charge for parts or services that were not actually provided, which suggests there was no actual fraud. While Mr. Gurrola's beliefs about the oxygen sensor and hoses were incorrect as a factual matter, there is no reason to conclude that his erroneous conclusions were dishonest. (First Cause for Discipline.)

8. The circumstantial evidence does not support a finding that Mr. Gurrola or Patriot Auto engaged in fraud. The most reasonable conclusion is that Mr. Gurrola made a simple mistake in concluding that the oxygen sensor and several hoses needed to be replaced. (Second Cause for Discipline.)

9. Respondent provided Mr. Villegas with an invoice that reasonably described the service work that was performed and the parts that were supplied. The invoice could have more accurately described the service work, but that often is the case, and the lack of detail under the circumstances did not establish an actionable violation. Mr. Villegas did not testify, and his hearsay declaration cannot support a factual finding that respondent failed to provide Mr. Villegas with a written estimate. It was established that respondent failed to provide Mr. Villegas with an appropriate written authorization, but this was a minor violation. (Third Cause for Discipline.)

10. The non-hearsay evidence did not establish that respondent failed to provide Mr. Villegas with a copy of the VIR related to the failed smog test taking place on March 8, 2012.

11. A preponderance of the evidence did not establish that respondent engaged in dishonesty, fraud or deceit by representing that the oxygen sensor and several hoses needed

to be replaced. It is more likely than not that Mr. Gurrola made a simple mistake in reaching and reporting those erroneous conclusions. (Fifth Cause for Discipline.)

The May 8, 2012, Undercover Investigation

12. On May 8, 2012, the BAR conducted an undercover investigation at Patriot Auto Care using a specially prepared 1992 Chevrolet Caprice.

From May 1 through 8, 2012, BAR Program Representative Richard L. Losee, a highly trained mechanic and an expert in the field of smog check inspections, conducted an inspection of a 1992 Chevrolet Caprice at the Bureau's Fontana documentation lab. He confirmed that the vehicle contained functioning emission control systems and all required emission control devices and that it could pass a properly conducted smog check inspection.

Mr. Losee thereafter created a malfunction in the 1992 Chevrolet by grounding the wiring for the air injection reactor (AIR) diverter valve. Based on his experience in the repair of Chevrolets, he believed this malfunction, while uncommon, occurred often enough to be diagnosed by a competent smog check technician. The diverter valve malfunction Mr. Losee created caused high readings of nitrogen oxide (NOx) on engine emission testing, and the Chevrolet failed a properly conducted smog check inspection after the malfunction was induced.

There was likely some carbon buildup on the exhaust gas recirculation (EGR) passages as a result of the age of the engine and miles the 1992 Chevrolet had been driven; however, Mr. Losee did not directly observe the condition of the EGR passages during his inspection. He assumed there was no problem with the EGR passages because the Chevrolet passed the testing related to the functioning of the EGR valve. Mr. Losee placed tamper indicators throughout the engine to determine what repairs were made at Patriot Auto. The only repair that was required to enable the Chevrolet to pass a properly conducted smog check inspection was the repair to the short-circuited AIR diverter valve wiring.

On May 8, 2012, Mr. Losee transported the 1992 Chevrolet from Fontana to National City, where he transferred custody of the vehicle to Bureau Program Representative Robert Cassel. He noted the odometer reading at the time of that transfer.

Mr. Cassel took custody of the 1992 Chevrolet, released custody of the vehicle to [REDACTED] a Bureau undercover operative, and instructed [REDACTED] to drive the vehicle to Patriot Auto. He told her to use the fictitious name [REDACTED] and request a smog check inspection for the Chevrolet. Mr. Cassel told [REDACTED] to bring back any documentation she was given related to the inspection and any repair. [REDACTED] left on the undercover run around 10:15 a.m. She drove the vehicle to Patriot Auto and requested a smog check inspection.

On May 9, 2012, [REDACTED] took delivery of the repaired 1992 Chevrolet and returned it to Mr. Cassel, together with copies of the VIR and invoice. The odometer reading was documented.

The VIR stated that the diverter valve was repaired and that the EGR passages were cleaned. The VIR stated that the 1992 Chevrolet had passed a smog inspection on May 9, 2012, at 1:02 p.m.

The invoice was dated May 9, 2012. It stated that a smog check inspection was performed, that the 1992 Chevrolet failed due to "high NOx," that the oxygen sensor was not connected, and that the catalytic converter had been welded backward. The invoice stated that the technician found the catalytic converter was properly installed and that there were no problems with it. The invoice stated that the customer was called, told about restricted EGR passages, and authorized their cleaning. The invoice stated that the customer called later in the day and was told that the cause of the high NOx was being diagnosed and that the air injection system was not working. The invoice stated that the technician found the O2 sensor was disconnected, the exhaust pipe was leaking, and there was an electrical short circuit that kept the air pump on all the time.

On May 9, 1992, [REDACTED] regained custody of the 1992 Chevrolet from Patriot Auto and returned it to Mr. Cassel. The odometer reading was documented. [REDACTED] provided Mr. Cassel with the documents she had been given.

On May 9, 2012, Mr. Cassel transferred custody of the 1992 Chevrolet back to Mr. Losee, who immediately transported the vehicle back to the Bureau's Fontana documentation lab. The next day, Mr. Losee was provided with copies of the VIR and invoice related to the May 8 and 9, 2012, transaction at Patriot Auto.

On May 10, 2012, Mr. Losee reinspected the 1992 Chevrolet. It passed a properly conducted smog check inspection. The defective wiring had been repaired. The tamper indicators were disturbed in a manner that was consistent with the cleaning of the EGR passages.

13. The foregoing information was carefully documented in declarations and reports prepared by BAR employees as a part of their official duties. Other information was obtained directly from the Vehicle Inspection Report, the statewide data base, and the invoice. [REDACTED] who was not a regular Bureau employee, did not testify, even though respondent had requested cross-examination when served with [REDACTED] declaration. [REDACTED] declaration was hearsay and was insufficient, by itself, to support a finding of fact, but it could be used to supplement and explain other findings that were established by non-hearsay evidence.

Mr. Alchi's Testimony

14. Mr. Alchi was present at Patriot Auto when the 1992 Chevrolet arrived at that facility. He recalled that it did not run smoothly on arrival. He suspected that it might be a Bureau undercover vehicle.

Mr. Gurrola conducted a smog check inspection of the 1992 Chevrolet that resulted in a finding that the NOx was too high for the Chevrolet to pass the smog check inspection. At some point, Mr. Alchi looked under the hood. He observed the O2 sensor was disconnected. It was subsequently reconnected at no charge. Mr. Gurrola told Mr. Alchi that he thought the EGR passages might need to be cleaned, which Mr. Alchi thought was a good idea. Later, Mr. Alchi was told that the wiring for the AIR diverter valve had short circuited. Mr. Alchi did not spend a great deal of time diagnosing the problems that caused the Chevrolet to fail the first smog check inspection, and he spent very little time supervising the repairs Mr. Gurrola actually provided. He trusted Mr. Gurrola and believed him to be a competent smog check technician.

Factual Conclusions – May 8, 2012, Undercover Operation

15. Although there was no direct testimony that established that Mr. Gurrola or anyone else told the undercover operator that the EGR passages were restricted, the circumstantial evidence established that was the case. There was no direct evidence observed before the undercover run that established that the EGR passages were restricted. Mr. Gurrola's precise reasoning in coming to the conclusion that the EGR passages were restricted was not established, but it was established that he cleaned the EGR passages. While Mr. Gurrola's belief that restricted EGR passages were part of the reason the Chevrolet failed the smog check inspection were incorrect as a factual matter, there is no reason to conclude that his mistaken belief was the result of anything other than a good faith mistake. (Tenth and Twelfth Causes for Discipline.) In fact, he cleaned the EGR valve to make sure there was no restriction. He would not have done so had he not believed that was the case.

16. The circumstantial evidence does not support a finding that Mr. Gurrola or Patriot Auto engaged in any fraud. The most reasonable conclusion is that Mr. Gurrola made a simple mistake in reaching the conclusion that the EGR passages were restricted and in cleaning those passages. (Eleventh Cause for Discipline.)

17. The 1992 Chevrolet was equipped with a Thermostatic Air Cleaner (TAC), a fact that was reflected in the vehicle's underhood label. However, several service manuals related to the 1992 Chevrolet stated that there was no TAC for the 1992 Chevrolet. When Mr. Guerrero was prompted by the EIS to describe his inspection of the TAC, Mr. Guerrero entered "N/A" to indicate that there was no TAC and that testing was not applicable. While the credible expert testimony established that this "N/A" entry violated Bureau procedures, it was a somewhat minor violation given the fact that most manuals do not recognize the presence of the TAC. (Thirteenth and Fifteenth Causes for Discipline.)

18. A preponderance of the evidence did not establish that respondent engaged in dishonesty, fraud or deceit by representing that the 1992 Chevrolet's EGR passages needed cleaning. There likely was carbon on the EGR valve, and the high NO_x could have been related to restricted EGR passages. It is more likely than not that Mr. Gurrola made a simple mistake in reaching and reporting that conclusion. (Fourteenth and Sixteenth Causes for Discipline.)

Respondent Corporation's Evidence

19. Mr. Alchi is 57 years old. He was born in Iraq. He obtained a doctorate in Automotive Engineering from the University of Hertfordshire, England, in 1993. He worked in England until 1996.

In 1996, Mr. Alchi came to the United States. He settled in San Jose. He purchased two Precision Tune Auto Care franchises in San Jose, each of which was registered with the Bureau as an automotive repair dealer and held a smog check station license. In 2003, Mr. Alchi sold one of the Precision Tune franchises; he continued to operate the other until 2007, when he sold that one. The Bureau did not impose any discipline upon the San Jose Precision Tune franchise registrations or licenses.

In March 2007, Mr. Alchi moved to San Diego. He purchased a Brake Depot franchise, changed its name to Patriot Auto Care and Brakes, became a licensed automotive repair dealer, and began to grow his business. In 2010, Patriot Auto became licensed as a smog check station. He hired Mr. Gurrola as a smog check technician. Mr. Alchi was not, himself, licensed as a smog check technician at the time.

20. Patriot Auto is a 4,000 square foot facility that has four service bays, one of which is a dedicated smog testing bay, an office, and a customer waiting area. There is only one EIS machine at Patriot Auto, and that machine is located in the dedicated smog testing bay. Patriot Auto is open Mondays through Saturdays, from 8:00 a.m. to 5:00 p.m.

There are currently four employees at Patriot Auto, including Mr. Alchi. The other three employees work as general auto mechanics and earn about \$12 per hour. In August 2013, Mr. Alchi terminated Mr. Gurrola's employment due to Mr. Gurrola's low STAR-certification test results. Mr. Alchi, who had become licensed as a smog check technician several years ago, took over Patriot Auto's smog check inspections and repairs after Mr. Gurrola's employment was terminated.

21. Mr. Alchi testified he takes smog testing seriously. He represented that he has changed the way Patriot Auto does business.

22. Mr. Alchi testified he has faced numerous personal challenges in the past few years. His wife miscarried in July 2011, after which she was hospitalized for an extended period. She recovered, but she was recently diagnosed with Stage 3 breast cancer. Since that diagnosis, she has undergone two surgeries, chemotherapy, and radiation treatments. With

respect to his attention to Patriot Auto's operations in 2011 and 2012, Mr. Alchi testified, "I was there, but I was not there."

23. In this proceeding, complainant sought a revocation, stayed, with a 30-day actual suspension and probation for three years. Mr. Alchi used the hearing process to obtain a reduction in the severity of the proposed discipline. He had a subjective good faith belief in the merits of his position, and he raised a colorable challenge to the most serious charges of fraud and misrepresentation. Mr. Alchi reported gross income in the amount of \$96,000 in 2013, but much of his income went to pay for his wife's medical expenses. He testified that he "was not making any money at the moment."

Evaluation

24. Based on the circumstantial evidence, it is more likely than not that Mr. Gurrola made bona fide errors in diagnosing some of the problems that caused the 1990 Toyota and the 1992 Chevrolet to fail smog check inspections. It was not established that Mr. Alchi, in either instance, knew or should have known that Mr. Gurrola made these bona fide errors. Mr. Gurrola did not engage in fraud or gross negligence. Complainant did not establish an industrywide standard of practice with respect to any violation of law that was proven, much less an intentional departure from it.

A preponderance of the evidence established that, in the testing and repair of the 1991 Toyota, Patriot Auto failed to provide Mr. Villegas with an appropriate written authorization of a verbal statement related to smog repair, and it replaced an oxygen sensor and three hoses that did not need replacing. This conduct involved a smog check technician's simple mistakes. A preponderance of the evidence established that in the testing and repair of the 1992 Chevrolet Caprice, a smog check technician unnecessarily cleaned and Patriot Auto charged for the cleaning EGR passages and that a smog check technician improperly answered "N/A" to a prompt during a smog check inspection. These were simple mistakes. Dishonesty, fraud, or deceit was not established in either transaction.

A violation of Business and Professions Code section 9884.9, subdivision (a)(1), exists for the failure to document required verbal customer authorization in connection with the repair of the 1991 Toyota Celica. A violation of Health and Safety Code section 44072.2, subdivision (a), exists for the failure to comply with the Motor Vehicle Inspection Program requirements by improperly entering the "N/A" in response to a prompt related to the presence of a TAC component in the inspection of the 1992 Chevrolet Caprice.

Under the BAR's disciplinary guidelines, a violation of Business and Professions Code section 9884.9 has a recommended maximum sanction of revocation and a minimum sanction of a 90-day suspension, with 80 days stayed, and two years' probation. Under the BAR's disciplinary guidelines, a Health and Safety Code section 44072.2 violation is similar to a Health and Safety Code section 44012 violation, which has a recommended maximum sanction of revocation and a minimum sanction of a 30-day suspension of the ARD and smog station license, stayed, with two years' probation.

No aggravating factors were established. There has been no previous demonstration of incompetence, no history of any citations having been issued, and no history of formal discipline. There was no attempt to intimidate any customer. Any improper conduct was the result of Mr. Gurrola's simple mistakes. No repair work was performed on either vehicle that endangered a consumer. While it was troubling that minor violations of law occurred during the course of each undercover operation, a pattern or practice of unlawful activity was not established. Patriot Auto's termination of Mr. Gurrola's employment constitutes a mitigating factor.

The purpose of administrative discipline is to protect the public, not to punish a wrongdoer. Under all the circumstances, a 90-day suspension of Patriot Auto's ARD and smog check station license, stayed, and placing Patriot Auto on two years' probation on standard terms and conditions of probation will protect the public. Patriot Auto will be directed to pay the Bureau's reasonable costs of investigation and enforcement as a condition of probation, which will serve as a painful economic reminder to obey the law. There is no need to impose discipline upon Patriot Auto's lamp station license or brake station license.

Costs of Investigation and Enforcement

25. A certification of costs established the Bureau spent at total of \$27,378.80 in the investigation of this matter, which included approximately 370 hours of investigative time for the preparation, documentation, and transportation of the vehicles used in the undercover runs, and approximately \$680 in undercover operator fees. Investigator costs were billed at rates from approximately \$69 per hour to \$77 per hour, reasonable amounts given the special expertise of the program representatives who prepared and documented the undercover runs. Costs cannot be awarded for the preparation and documentation related to the charges that were withdrawn.

26. The deputy who prosecuted this matter filed a declaration that stated that the Department of Justice billed the Bureau \$10,132.50 for legal services through September 4, 2014. A schedule was attached to the declaration that specified the dates on which legal services were provided, the nature of those services, the time spent, and the name of the individual providing services. Legal services were billed at the rate of \$170 per hour, which is a reasonable rate. The case was technical and complicated, and the deputy who prosecuted the action was skilled, well prepared, aggressive, and extremely professional.

27. The Bureau's total costs are subject to reduction after the *Zukerman*¹ criteria are applied.

¹ *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 stands for the proposition that an administrative agency must exercise discretion and reduce or eliminate cost awards so licensees with potentially meritorious claims or defenses are not deterred from exercising their right to a hearing.

Under *Zukerman*, it is determined that respondent corporation used the hearing process to obtain dismissal of some charges and a reduction in the severity of the proposed discipline; (2) respondent corporation had a subjective good faith belief in the merits of its position; (3) respondent corporation raised a substantial and effective challenge to the proposed discipline; and (4) respondent corporation has the financial ability to pay some, but not all, of the costs of investigation and enforcement.

Following application of the *Zukerman* criteria, it is reasonable to direct respondent corporation to pay the Bureau \$5,000 for its costs of investigation and enforcement.

LEGAL CONCLUSIONS

Purpose of Administrative Discipline

1. Administrative proceedings to revoke, suspend, or impose discipline on an occupational or professional licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

Standard of Proof

2. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. In determining the proper standard of proof in administrative license revocation proceedings, courts draw a distinction between professional licenses, on the one hand, and nonprofessional or occupational licenses, on the other. In proceedings to revoke professional licenses, decision makers apply the clear and convincing evidence standard of proof, while in proceedings to revoke nonprofessional or occupational licenses, decision makers apply the preponderance of the evidence standard of proof. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

The completion of rigorous coursework and the passing of a competency examination are not required to hold an automotive repair dealer registration or a smog check station license.² Accordingly, these registrations and licenses are determined to be nonprofessional or occupational licenses, and proceedings to revoke them are governed by the preponderance of evidence standard of proof. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair, Id.*, at p. 917.)

² Business and Professions Code section 9884 requires an applicant for an automotive dealer registration to pay a specified fee. Health and Safety Code section 44030 authorizes the issuance of a smog check station license to an applicant that possesses the equipment and material specified by regulation and in the Smog Check Manual.

Relevant Statutory and Regulatory Authority

3. Business and Professions Code section 9884.7 provides in part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may . . . 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 . . .

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

[¶] . . . [¶]

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

(4) Any other conduct that constitutes fraud. _____

[¶] . . . [¶]

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

4. Business and Professions Code section 9884.4 provides in part:

All work done by an automotive repair dealer . . . shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. . . . One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

5. Health and Safety Code section 44012 provides in part: “The test at the smog check stations shall be performed in accordance with procedures prescribed by the department. . . .”

6. Health and Safety Code section 44013 provides:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

7. Health and Safety Code section 44072.2 provides in part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee . . . does any of the following:

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] . . . [¶]

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

8. California Code of Regulations, title 16, section 3340.41, subdivision (a), provides: “A licensed station shall give a copy of the test report printed from the emissions inspection system to the customer. The report shall be attached to the customer's invoice.”

Cause to Impose Discipline

9. First Cause for Discipline: A preponderance of the evidence does not establish cause to impose discipline against Patriot Auto’s registration and license under Business and Professions Code section 9884.7, subdivision (a)(1). It was not established that respondent corporation or its employee made untrue or misleading statements that were known, or in the exercise of reasonable care should have been known, to be untrue or misleading insofar as those statements related to the replacement of the oxygen sensor and three vacuum hoses. Patriot Auto’s employee made a bona fide error in the diagnosis of a mechanical problem.

10. Second Cause for Discipline: A preponderance of the evidence does not establish cause to impose discipline against Patriot Auto’s registration and license under

Business and Professions Code section 9884.7, subdivision (a)(4). It was not established that Patriot Auto or its employee engaged in fraud related to the replacement of the oxygen sensor and three vacuum hoses. Patriot Auto's employee made a bona fide error in the diagnosis of a mechanical problem.

11. Third Cause for Discipline: A preponderance of the evidence does not establish cause to impose discipline against Patriot Auto's registration and license under Business and Professions Code sections 9884.8 or 9884.9, subdivision (a), for Patriot Auto's alleged failure to provide a Bureau operator with an invoice or Patriot Auto's alleged failure to provide the operator with a written estimate. No non-hearsay evidence supported such a conclusion.

12. A preponderance of the evidence established that on March 8, 2012, Patriot Auto failed to document, as required, a customer's telephonic authorization for repair work, which constituted a violation of Business and Professions Code section 9884.9, subdivision (a)(1).

13. Fourth Cause for Discipline: A preponderance of the evidence does not establish cause to impose discipline against Patriot Auto's registration and license under Health and Safety Code section 44072.2, subdivision (c). No non-hearsay evidence supported the allegation that on March 8, 2012, Patriot Auto failed to provide a Bureau operative with a VIR related to a failed smog test that was performed before repairs were made.

14. Sixth through Ninth Causes for Discipline: The allegations related to the sixth through ninth caused for discipline were withdrawn during the hearing.

15. Tenth Cause for Discipline: A preponderance of the evidence does not establish cause to impose discipline against Patriot Auto's registration and license under Business and Professions Code section 9884.7, subdivision (a)(1). It was not established that Patriot Auto or its employee made untrue or misleading statements that were known, or in the exercise of reasonable care should have been known, to be untrue or misleading insofar as those statements related to the cleaning of the EGR passages. Patriot Auto's employee made a bona fide error in the diagnosis of a mechanical problem.

16. Eleventh Cause for Discipline: A preponderance of the evidence does not establish cause to impose discipline against Patriot Auto's registration and license under Business and Professions Code section 9884.7, subdivision (a)(4). It was not established that Patriot Auto or its employee engaged in fraud related to the need to clean the EGR passages. Patriot Auto's employee made a bona fide error in the diagnosis of a mechanical problem.

17. Twelfth Cause for Discipline: A preponderance of the evidence did not establish cause to impose discipline against Patriot Auto's registration and license under Business and Professions Code section 9884.7, subdivision (a)(6). It was not established that Patriot Auto or its employee knowingly made an untrue or misleading record by stating on

Invoice No. [REDACTED] that the EGR passages were restricted. The passages likely had some carbon on them. Patriot Auto's employee made a bona fide error in the diagnosis of a mechanical problem.

18. Thirteenth Cause for Discipline: A preponderance of the evidence established cause to impose discipline against Patriot Auto's registration and license under Health and Safety Code section 44072.2, subdivision (a). On May 8, 2012, respondent corporation's employee failed to comply with Business and Professions Code section 44012 in his inspection of the 1992 Chevrolet in that he entered "N/A" in response to an EIS prompt seeking information concerning the TAC, which was improper because the vehicle was equipped with a TAC.

19. Fourteenth Cause for Discipline: A preponderance of the evidence did not establish cause to impose discipline against Patriot Auto's registration and license under Health and Safety Code section 44072.2, subdivision (d). It was not established that Patriot Auto or its employee committed acts involving dishonesty, fraud, or deceit whereby another was injured. The representation made by the employee to the Bureau operator to the effect that the EGR passages were restricted was a simple mistake, a bona fide error. A review of the tamper indicators following the service provided at Patriot Auto was consistent with the cleaning of the EGR valve.

20. Fifteenth and Sixteenth Causes for Discipline: These causes for discipline relate to respondent Alberto J. Gurrola's alleged conduct, and not to Patriot Auto's conduct. Mr. Gurrola's license is not at issue in this proceeding.

Costs of Investigation and Enforcement

21. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . upon request of the entity bringing the proceeding 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.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and

prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a). . . .

22. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is very similar to Bus. & Prof. Code, § 125.3) did not violate due process. But, it was incumbent upon the State Board of Chiropractic Examiners to exercise its discretion to reduce or eliminate cost awards in a manner to ensure that section 317.5 did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.”

The California Supreme Court set forth four factors the agency was required to consider: (1) whether the chiropractor used the hearing process to obtain dismissal of charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a subjective good faith belief in the merits of his position; (3) whether the chiropractor raised a colorable challenge to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

Since section 317.5 and Business and Professions Code section 125.3 contain substantially the same language and relate to cost recovery, *Zuckerman's* reasoning must be applied to Business and Professions Code section 12.53 to avoid constitutional pitfalls.

23. The *Zukerman* criteria were applied, and it is reasonable to direct respondent corporation to pay to the Bureau \$5,000 for costs of investigation and enforcement.

ORDER

ARD Registration No. ARD 253302 and Smog Station License No. RC 253302 issued to Patriot Auto Care and Brakes are hereby suspended for a period of 90 days; provided, however, that the order of suspension is stayed and ARD Registration No. ARD 253302 and Smog Station License No. RC 253302 are placed on probation for a period of two years on the following terms and conditions:

1. Obey All Laws: During the period of probation, Patriot Auto Care and Brakes shall comply with all state and federal laws and with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

2. Maintain Proper Equipment and Material: During the period of probation, Patriot Auto Care and Bakes shall not perform any form of smog inspection, or emission system diagnosis or repair, until Patriot Auto Care and Brakes has purchased, installed, and maintained the diagnostic and repair equipment prescribed by the Bureau that is necessary to properly perform such work, and until Bureau has been given 10 days' notice of the availability of the equipment for inspection by a BAR representative.

3. Report Probation Compliance as Directed: The President or Chief Executive Officer of Patriot Auto Care and Brakes shall report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, concerning the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

4. Report Financial Interest: Within 30 days of the effective date of this action, Patriot Auto Care and Brakes shall report any financial interest which any partners, officers, or owners of the respondent corporation may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

5. Provide Unrestricted Access: Patriot Auto Care and Brakes shall provide Bureau representatives with unrestricted access to inspect all vehicles (including parts) that are undergoing testing or repairs, up to and including the point of completion.

6. Payment of Costs of Investigation and Enforcement: Patriot Auto Care and Brakes shall pay to the Bureau the sum of \$5,000.00 for the Bureau's costs of investigation and enforcement in this matter. Installment payments of \$250 or month shall be made by Patriot Auto Care and Brakes. The failure to make a timely installment payment shall constitute a violation of probation.

7. Automatic Extension of Probation: If an accusation or petition to revoke probation is filed against Patriot Auto Care and Brakes during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation or the petition to revoke probation, and the period of probation shall be extended until such decision.

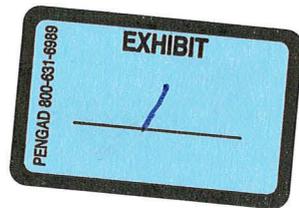
8. Violation of Probation: Should the Director of Consumer Affairs determine that Patriot Auto Care and Brakes has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, dissolve the stay order and impose a 90-day actual suspension upon ARD Registration No. ARD 253302 and Smog Station License No. RC 253302.

9. Successful Completion of Probation: Upon the successful completion of probation, ARD Registration No. ARD 253302 and Smog Station License No. RC 253302 issued to Patriot Auto Care and Brakes shall be fully restored.

DATED: October 8, 2014



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings



1 KAMALA D. HARRIS
 Attorney General of California
 2 LINDA K. SCHNEIDER
 Supervising Deputy Attorney General
 3 RITA M. LANE
 Deputy Attorney General
 4 State Bar No. 171352
 110 West "A" Street, Suite 1100
 5 San Diego, CA 92101
 P.O. Box 85266
 6 San Diego, CA 92186-5266
 Telephone: (619) 645-2614
 7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
 9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
 10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:
 13 **ALCHI INC., DBA PATRIOT AUTO**
CARE AND BRAKES, WATHIQ N.F.
 14 **ALCHI, PRESIDENT**
 910 Highland Avenue, Ste. A
 National City, CA 91950

Case No. 79/13-76

A C C U S A T I O N

(SMOG CHECK)

15 **Automotive Repair Dealer Registration No.**
 16 **ARD 253302**
Smog Check Station License No. RC 253302
 17 **Lamp Station License No. LS 253302, Class**
A
 18 **Brake Station License No. BS 253302, Class**
C

19 **And**

20 **J. ALBERTO GURROLA**
 21 **526 E. Avenue**
 National City, CA 91950

22 **Advanced Emission Specialist Technician**
 23 **License No. EA 108157 (to be redesignated**
 24 **upon renewal as EO 108157 and/or EI**
108157)

25 Respondents.

26
 27 ///

28 ///

1 Complainant alleges:

2 **PARTIES**

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

5 **LICENSE INFORMATION**

6 **Automotive Repair Dealer Registration No. ARD253302**

7 2. On or about January 18, 2008, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 253302 ("registration") to Alchi Inc., doing business as Patriot Auto
9 Care and Brakes, Wathiq N.F. Alchi, President ("Respondent"). The registration will expire on
10 December 31, 2013, unless renewed.

11 **Smog Check Station License No. RC 253302**

12 3. On or about February 26, 2010, the Bureau issued Smog Check Station License
13 Number RC 253302 ("station license") to Respondent. The station license was in full force and
14 effect at all times relevant to the charges brought herein and will expire on December 31, 2013,
15 unless renewed.

16 **Lamp Station License No. LS 253302**

17 4. On or about June 28, 2012, the Bureau of Automotive Repair issued Lamp Station
18 License Number LS 253302, Class A, to Respondent. The Lamp Station License was in full force
19 and effect at all times relevant to the charges brought herein and will expire on December 31,
20 2013, unless renewed.

21 **Brake Station License No. BS 253302**

22 5. On or about June 28, 2012, the Bureau of Automotive Repair issued Brake Station
23 License Number BS 253302, Class C to Respondent. The Brake Station License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on December 31,
25 2013, unless renewed.

26 **Advanced Emission Specialist Technician License EA 108157**

27 6. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist
28 Technician License Number EA 108157 ("technician license") to J. Alberto Gurrola

1 (“Respondent Gurrola”). Respondent Gurrola’s technician license is due to expire on December
2 31, 2013. Upon timely renewal of the license, the license will be redesignated as EO 108157
3 and/or to EI 108157.¹

4 JURISDICTION

5 7. This Accusation is brought before the Director of Consumer Affairs (“Director”) for
6 the Bureau of Automotive Repair, under the authority of the following laws. All section
7 references are to the Business and Professions Code unless otherwise indicated.

8 8. Business and Professions Code (“Code”) section 9884.7 provides that the Director
9 may revoke an automotive repair dealer registration.

10 9. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
11 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
12 proceeding against an automotive repair dealer or to render a decision invalidating a registration
13 temporarily or permanently.

14 10. Health and Safety Code section 44002 provides, in pertinent part, that the Director
15 has all the powers and authority granted under the Automotive Repair Act for enforcing the
16 Motor Vehicle Inspection Program.

17 11. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration
18 or suspension of a license by operation of law, or by order or decision of the Director of
19 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
20 Director of jurisdiction to proceed with disciplinary action.

21 12. Health and Safety Code section 44072.8 states that when a license has been revoked
22 or suspended following a hearing under this article, any additional license issued under this
23 chapter in the name of the licensee may be likewise revoked or suspended by the director.

24 13. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
25 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 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/or Smog Check Repair Technician (EI) license.

1 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
2 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

3 **STATUTORY PROVISIONS**

4 14. Code section 9884.7 states, in pertinent part:

5 (a) The director, where the automotive repair dealer cannot show there was
6 a bona fide error, may refuse to validate, or may invalidate temporarily or
7 permanently, the registration of an automotive repair dealer for any of the
8 following acts or omissions related to the conduct of the business of the
9 automotive repair dealer, which are done by the automotive repair dealer or any
10 automotive technician, employee, partner, officer, or member of the automotive
11 repair dealer.

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

16

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

19 (4) Any other conduct which constitutes fraud.

20

21 (6) Failure in any material respect to comply with the provisions of this
22 chapter [the Automotive Repair Act (Code, § 9880, et seq.)] or regulations adopted
23 pursuant to it.

24 15. Code section 9884.8 states, in pertinent part:

25 All work done by an automotive repair dealer, including all warranty work,
26 shall be recorded on an invoice and shall describe all service work done and parts
27 supplied. . . . One copy of the invoice shall be given to the customer and one
28 copy shall be retained by the automotive repair dealer.

16. Code section 9884.9 states, in pertinent part:

23 (a) The automotive repair dealer shall give to the customer a written
24 estimated price for labor and parts necessary for a specific job. No work shall be
25 done and no charges shall accrue before authorization to proceed is obtained from
26 the customer. No charge shall be made for work done or parts supplied in excess
27 of the estimated price without the oral or written consent of the customer that shall
28 be obtained at some time after it is determined that the estimated price is
insufficient and before the work not estimated is done or the parts not estimated
are supplied. Written consent or authorization for an increase in the original
estimated price may be provided by electronic mail or facsimile transmission from
the customer. The bureau may specify in regulation the procedures to be followed
by an automotive repair dealer when an authorization or consent for an increase in

1 the original estimated price is provided by electronic mail or facsimile
2 transmission. If that consent is oral, the dealer shall make a notation on the work
3 order of the date, time, name of person authorizing the additional repairs and
4 telephone number called, if any, together with a specification of the additional
5 parts and labor and the total additional cost.

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10 17. Health and Safety Code section 44072.2 provides, in pertinent part:

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

14 (a) Violates any section of this chapter [the Motor Vehicle Inspection
15 Program (Health and Safety Code, § 44000, et seq.)] and the regulations adopted
16 pursuant to it, which related to the licensed activities.

17

18 (c) Violates any of the regulations adopted by the director pursuant to
19 this chapter.

20 (d) Commits any act involving dishonesty, fraud, or deceit whereby
21 another is injured.

22 18. Health and Safety Code section 44072.8 states:

23 When a license has been revoked or suspended following a hearing under this
24 article, any additional license issued under this chapter in the name of the licensee
25 may be likewise revoked or suspended by the director.

26 **COST RECOVERY**

27 19. Code section 125.3 provides, in pertinent part, that a Board may request the
28 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.

29 **UNDERCOVER OPERATION – March 8, 2012**

30 20. Prior to the undercover run at the Respondent's facility, Bureau personnel had
31 inspected and documented a 1990 Toyota (Toyota). The only emission repair necessary for the
32 Toyota to pass a properly performed Smog Check Inspection was the replacement of a defective
33 vacuum hose connected to the Manifold Absolute Pressure (MAP) Sensor.

34 21. On or about March 8, 2012, a Bureau undercover operator ("operator") drove the
35 Bureau documented Toyota to the Respondent's facility and requested a Smog Check Inspection.
36 The operator signed an estimate but was not provided with a copy. Smog test results obtained

1 from the Bureau's Vehicle Information Database shows that Respondent Gurrola performed a
2 Smog Check Inspection on the Toyota and the operator was then informed that the vehicle had
3 failed. The operator authorized the Respondent to diagnose the cause of the Smog Check
4 Inspection failure. The Respondent printed a revised estimate totaling \$109.95 and the operator
5 signed it but was not provided with a copy. Following the diagnosis Respondent's employee told
6 the operator the Toyota had a bad Oxygen Sensor and four (4) bad vacuum lines (hoses). The
7 operator authorized the repairs and Respondent's employee printed another revised estimate
8 totaling \$331.28. The operator signed the revised estimate but was not provided with a copy. On
9 or about March 9, 2012, the operator returned to the subject facility to retrieve the Toyota. The
10 operator paid \$331.28, received Invoice No. [REDACTED] and a Vehicle Inspection Report (VIR) that
11 shows the undercover vehicle passed the smog inspection and Certificate of Compliance number
12 [REDACTED] was issued. The undercover operator was not given a copy of the VIR for the failed
13 smog test conducted on March 8, 2012.

14 22. On or about March 14, 2012, Bureau personnel re-inspected the Toyota and found the
15 following: the Oxygen Sensor, two (2) vacuum lines to the vacuum modulator, and the defective
16 hose to the MAP Sensor had been replaced. The only repair necessary for the Toyota to pass a
17 properly performed Smog Check Inspection was the replacement of the defective vacuum hose to
18 the MAP Sensor. The replacement of the Oxygen Sensor and the two (2) vacuum lines to the
19 vacuum modulator were unnecessary.

20 23. The smog test repair information obtained from the VID and the VIR generated by
21 Respondent Gurrola, shows repairs were performed to the Toyota's Vacuum Routing (EGR),
22 Initial Timing (Secondary), and Oxygen Sensor (Inputs). The Toyota's Exhaust Gas Recirculation
23 (EGR) System, Initial Timing, and Oxygen Sensor were documented and found to be in good
24 condition and not in need of repair or replacement.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 24. Respondent's registration is subject to discipline pursuant to Code section
28 9884.7(a)(1), in that Respondent made statements which he knew or which by exercise of

1 reasonable care should have known to be untrue or misleading when, on or about March 8, 2012,
2 the Respondent told the undercover operator that the Oxygen Sensor and four (4) vacuum lines on
3 the Bureau's 1990 Toyota needed replacement, when in fact, only one (1) vacuum line was
4 defective. The Oxygen Sensor and the two (2) vacuum lines to the vacuum modulator were in
5 good condition and did not need replacement.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 25. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
9 subdivision(a)(4), in that on or about March 9, 2012, the Respondent committed acts constituting
10 fraud by accepting payment for replacement of the Oxygen Sensor and vacuum modulator lines
11 when the only repair needed was the replacement of the defective vacuum hose to the MAP
12 Sensor. The replacement of the Oxygen Sensor and vacuum modulator lines was unnecessary.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Code)**

15 26. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
16 subdivision (a)(6), in that Respondent failed to comply with the following sections of that code:

17 a. **Section 9884.8:** On or about March 9, 2012, Respondent failed to provide the
18 Bureau operator with an invoice describing all service work performed and parts supplied.

19 b. **Section 9884.9, subdivision (a):** On or about March 8, 2012, Respondent failed to
20 provide the Bureau operator with a written estimated price for parts and labor for a specific job.

21 c. **Section 9884.9, subdivision (a)(1):** On or about March 8, 2012, Respondent failed
22 to note additional authorization for repairs on Invoice No. [REDACTED]

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

25 27. Respondent's Smog Check Station license is subject to discipline pursuant to Health
26 and Safety Code section 44072.2, subdivision (c), in that on or about March 8, 2012, Respondent
27 violated California Code of Regulations, title 16, section 3340.41, subdivision (a) in that on or

28 ///

1 about March 9, 2012, Respondent failed to provide the Bureau operator with a copy of the VIR
2 for the failed smog test conducted on March 8, 2012.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud or Deceit)**

5 28. Respondent's Smog Check Station license is subject to discipline pursuant to Health
6 and Safety Code section 44072.2, subdivision (d), in that on or about March 8, 2012, Respondent
7 committed acts involving dishonesty, fraud or deceit whereby another was injured by representing
8 to the undercover operator that that the undercover vehicle needed the Oxygen Sensor and four
9 (4) vacuum lines replaced, when in fact, only one (1) vacuum line was defective.

10 **UNDERCOVER OPERATION – APRIL 5, 2012**

11 29. Prior to the undercover run at the subject facility, Bureau personnel had inspected and
12 documented a 1992 Toyota (Toyota). Bureau personnel installed a defective vacuum hose
13 connected to the Vacuum Sensor for the fuel injection system. This condition caused the Toyota
14 to fail a Smog Check Inspection due to elevated tailpipe emissions. The only emission repair
15 necessary for the Toyota to pass a properly performed Smog Check Inspection was the
16 replacement of the defective vacuum hose to the Vacuum Sensor.

17 30. On or about April 5, 2012, a Bureau undercover operator drove the Bureau
18 documented Toyota to the Respondent's facility and requested a Smog Check Inspection. The
19 operator signed an estimate and was provided with a copy. Smog test results obtained from the
20 Bureau's Vehicle Information Database shows that Respondent Gurrola performed a Smog Check
21 Inspection on the Toyota and Smog Certificate of Compliance No. [REDACTED] was issued. The
22 operator paid \$58.00, received a copy of Invoice No. [REDACTED] and a VIR.

23 31. On April 9, 2012, Bureau personnel re-inspected the Toyota and found the following:
24 The defective vacuum hose to the Vacuum Sensor was still installed on the Toyota. Bureau
25 personnel performed two (2) Smog Check Inspections on the Toyota and the vehicle failed both
26 Smog Check Inspections due to elevated tailpipe emissions. The Bureau documented Toyota
27 could not have passed a properly performed Smog Check Inspection.

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SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

32. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on or about April 5, 2012, regarding the 1992 Toyota, Respondent failed to comply with Health and Safety Code section 44012 in that Respondent failed to perform emission control inspections on the Toyota in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

33. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about April 5, 2012, regarding the 1992 Toyota, Respondent failed to comply with the provisions of California Code of Regulations, title 16, section 3340.35, subdivision (c) in that Respondent issued electronic Certificate of Compliance No. [REDACTED] for the Toyota even though the vehicle had not been inspected in accordance with section 3340.42.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

34. Respondent Gurrola's technician license(s) is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about April 5, 2012, regarding the 1992 Toyota, Respondent Gurrola failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent Gurrola failed to perform emission control inspections on the vehicle in accordance with procedures prescribed by the department.

b. **Section 44032:** Respondent Gurrola failed to perform tests of emission control devices and systems in accordance with Section 44012.

NINTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

35. Respondent Gurrola's technician license(s) is subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about April 5, 2012, regarding the

1 1992 Toyota, Respondent Gurrola failed to comply with provisions of California Code of
2 Regulations, title 16, section 3340.30, subdivision (a) in that Respondent Gurrola failed to
3 inspect, test and repair the Toyota in accordance with Health and Safety Code sections 44012 and
4 44035, and California Code of Regulations, title 16, section 3340.42.

5 **UNDERCOVER OPERATION – MAY 8, 2012**

6 36. Prior to the undercover run at the subject facility, Bureau personnel had inspected and
7 documented a 1992 Chevrolet (Chevrolet). Bureau personnel caused a malfunction to the AIR
8 system (AIR control wire grounded). This condition causes the vehicle to fail a Smog Check
9 Inspection test due to excessive Oxides of Nitrogen (NOX) emission levels. The only emission
10 repair necessary for the Chevrolet to pass a properly performed Smog Check Inspection was to
11 repair the malfunction to the AIR system.

12 37. On or about May 8, 2012, a Bureau undercover operator drove the Bureau
13 documented Chevrolet to the Respondent's facility and requested a Smog Check Inspection. The
14 operator signed an estimate and was provided with a copy. Respondent Gurrola performed a
15 Smog Check Inspection on the Chevrolet and Respondent told the operator that the vehicle had
16 failed. The operator authorized the subject facility to diagnose the cause of the Smog Check
17 Inspection failure and was provided a written estimate of \$90.00 for the diagnosis.

18 38. On or about May 9, 2012, the operator phoned the Respondent to inquire about the
19 progress of the diagnosis. She was told the EGR (Exhaust Gas Recirculation) passages were
20 restricted with carbon and needed to be cleaned out. The operator was given a verbal estimate of
21 \$90.00 and she then authorized the repair.

22 39. On or about May 9, 2012, the operator returned to the subject facility to retrieve the
23 Chevrolet. The Respondent told the operator additional problems had been found with the
24 Chevrolet in that two wires had been taped together and they were grounded causing the air pump
25 to run all the time. The operator paid \$238.00, received Invoice number [REDACTED] and two (2) VIRs.
26 One VIR, dated May 8, 2012, shows the Chevrolet failed the failed the Smog Check Inspection
27 and the second VIR, Dated May 9, 2012, shows the Chevrolet passed the Smog Check Inspection.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program)**

3 44. Respondent's station license is subject to discipline pursuant to Health and Safety
4 Code section 44072.2, subdivision (a), in that on or about May 8, 2012, in regard to the 1992
5 Chevrolet, Respondent failed to comply with Code section 44012 in that Respondent failed to
6 perform the emission control inspection on the undercover vehicle in accordance with procedures
7 prescribed by the department in that Respondent entered N/A (Not Applicable) into the EIS for
8 the visual inspection results for the Thermostatic Air Cleaner (TAC), when in fact, a TAC is
9 required and was present and connected on the 1992 Chevrolet.

10 **FOURTEENTH CAUSE FOR DISCIPLINE**

11 **(Dishonesty, Fraud or Deceit)**

12 45. Respondent's station license is subject to discipline pursuant to Health and Safety
13 Code section 44072.2, subdivision (d), in that on or about March 8, 2012, Respondent committed
14 acts involving dishonesty, fraud or deceit whereby another was injured by telling the undercover
15 operator that EGR passages of the 1992 Chevrolet were restricted and needed to be cleaned, and
16 accepting payment for this repair, when in fact the EGR system was in good condition,
17 functioning properly, and not in need of repair or service.

18 **FIFTEENTH CAUSE FOR DISCIPLINE**

19 **(Violations of the Motor Vehicle Inspection Program)**

20 46. Respondent Gurrola's technician license(s) is subject to discipline pursuant to Health
21 and Safety Code section 44072.2, subdivision (a), in that on or about May 8, 2012, regarding the
22 1992 Chevrolet, Respondent Gurrola failed to comply with Code sections 44012 in that
23 Respondent Gurrola failed to perform emission control inspections on 1992 Chevrolet in
24 accordance with procedures prescribed by the department in that Respondent Gurrola entered
25 N/A (Not Applicable) into the EIS for the visual inspection results for the Thermostatic Air
26 Cleaner (TAC), when in fact, a TAC is required and was present and connected on the undercover
27 vehicle.

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JA,
9/9/2014

1 **SIXTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 47. Respondent Gurrola's technician license(s) is subject to discipline pursuant to Health
4 and Safety Code section 44072.2, subdivision (c), in that on or about May 8, 2012, regarding the
5 1992 Chevrolet, Respondent Gurrola failed to comply with provisions of California Code of
6 Regulations, title 16, section 3340.30, subdivision (a) in that Respondent Gurrola failed to
7 inspect, test and repair the 1992 Chevrolet in accordance with Health and Safety Code sections
8 44012 and 44035, and California Code of Regulations, title 16, section 3340.42 as set forth in
9 paragraph 45 above.

10 **OTHER MATTERS**

11 48. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
12 or may invalidate temporarily or permanently, the registrations for all places of business operated
13 in this state by Alchi Inc., including, but not limited to Patriot Auto Care and Brakes, Automotive
14 Repair Dealer Registration No. ARD 253302, upon a finding that it has, or is, engaged in a course
15 of repeated and willful violations of the laws and regulations pertaining to an automotive repair
16 dealer.

17 49. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
18 License No. RC 253302, issued to Alchi Inc., Wathiq N. F. Alchi, President, doing business as
19 Patriot Auto Care and Brakes, is revoked or suspended; any additional license issued under this
20 chapter in the name of said licensee may be likewise revoked or suspended by the director.

21 50. Pursuant to Health & Safety Code section 44072.8, if Lamp Station License No. LS
22 253302, class A, issued to Alchi Inc., Wathiq N. F. Alchi, President, doing business as Patriot
23 Auto Care and Brakes, is revoked or suspended; any additional license issued under this chapter
24 in the name of said licensee may be likewise revoked or suspended by the director.

25 51. Pursuant to Health & Safety Code section 44072.8, if Brake Station License No. BS
26 253302, class C, issued to Alchi Inc., Wathiq N. F. Alchi, President, doing business as Patriot
27 Auto Care and Brakes, is revoked or suspended; any additional license issued under this chapter
28 in the name of said licensee may be likewise revoked or suspended by the director.

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9. Ordering Alchi Inc., doing business as Patriot Auto Care and Brakes, Wathiq N. F. Alchi, President, and J. Alberto Gurrola, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 5/3/13

John Wallauch by Dave Balatto
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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ATLANTA, GEORGIA
MAY 13 2013