

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

In the Matter of the Accusation Against:

**THE TRUCK TOWN, INC. ANGEL VARGAS, PRESIDENT, ALVAZO URZUA,**

**TREASURER**

2748 14th Street

Riverside, CA 92507

Automotive Repair Dealer Registration No. ARD 270941

Smog Check Station License No. RC 270941

and

**ALEX URZUA**

411 W. Alton Ave. Apt. F

Santa Ana. CA 92707

Smog Check Inspector License No. EO 639699

Smog Check Repair Technician License No. EI 639699

Respondents.

Case No. 79/22-18823

OAH No. 2023100648

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on June 21, 2024.

IT IS SO ORDERED May 15, 2024.

Signature on file  
GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

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Smog Check and Repair Station License No. RC 270941,**

**and**

**ALEX URZUA,**

**Smog Check Inspector License No. EO 639699,**

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**Respondents.**

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## **PROPOSED DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on March 25, 2024.

Michael Karimi, Deputy Attorney General, Department of Justice, State of California, represented complainant Patrick Dorais, Chief, Bureau of Automotive Repair (bureau), Department of Consumer Affairs, State of California.

Alex Urzua, respondent, represented himself.<sup>1</sup>

The matter was submitted for decision on March 25, 2024.

## **FACTUAL FINDINGS**

### **Background**

1. On September 20, 2016, the bureau issued Smog Check Inspector License No. EO 639699 to respondent. The Smog Check Inspector License was in full force and effect at all times relevant to the allegations in this matter and will expire on March 31, 2024, unless renewed.

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<sup>1</sup> Respondents The Truck Town Inc., Angel Vargas, President, Alvaro Urzua, Treasurer had a default decision entered against them in a prior decision by the bureau. As such, for purposes of this decision, the term "respondent" will refer only to Alex Urzua.

2. On September 19, 2016, the bureau issued Smog Check Repair Technician License Number EI 639699 to respondent. The Smog Check Repair Technician License will expire on December 31, 2024, unless renewed.

3. On June 14, 2023, complainant signed the accusation in this matter in his official capacity alleging eight causes for discipline stemming from multiple fraudulent smog checks conducted by respondent between June 6, 2021, and December 14, 2022. The first five causes for discipline were alleged against Truck Town Inc., and as such, are not at issue in this case. The remaining sixth through eighth causes for discipline were alleged against respondent and are the only ones at issue in this proceeding.

Complainant seeks revocation of respondent's licenses; recovery of the costs of investigation in the amount of \$5,706.05; and recovery of the costs of enforcement in the amount of \$7,740. The declarations submitted in support of the costs comply with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the costs are reasonable.

4. Respondent timely filed a Notice of Defense; this hearing followed.

### **California's Smog Check Program<sup>2</sup>**

5. California's smog check program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. Beginning March 9, 2015, the smog check program was updated to require use of an On-Board

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<sup>2</sup> The factual findings contained in this portion of the proposed decision were derived from the testimony of Ian Evans and the report he completed in connection with his investigation of respondents.

Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of the state when inspecting most model-year 2000 and newer gasoline and hybrid vehicles. The BAR-OIS consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is an On-Board Diagnostic (OBD) scan tool that retrieves diagnostic data from the vehicle. The DAD connects between the BAR-OIS computer and the vehicle's on-board computer. Data retrieved and recorded during a BAR-OIS smog check includes the electronic vehicle identification number (eVIN), the communication protocol, and the number of parameter identifications.

On all 2005 and newer vehicles (and in some older vehicles), the eVIN is programmed into the on-board diagnostics system. This electronically programmed VIN is referred to as the "eVIN" and is captured by BAR-OIS during a smog check, and under normal circumstances matches the physical VIN on the vehicle.

The communication protocol is an electronic "language" that is used by the on-board computer to communicate to scan tools and other devices such as the BAR-OIS. The specific protocols used to access a vehicle's computer are programmed by the manufacturer and are specific to a vehicle's make, model, and year.

Parameter Identifications (PIDs) are data points reported by the on-board computer to the BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other input and output values. The PID count is the number of data points reported by the vehicle's OBD II system, is programmed during manufacture, and does not change.

The inspector also performs a visual and functional test on the vehicle. The BAR-OIS prints a Vehicle Inspection Report, which is the physical record of the test results

and shows the certificate of compliance number that is issued to a passing vehicle. The smog technician must sign the Vehicle Inspection Report to indicate the inspection was done within bureau guidelines.

The BAR-OIS transmits the data to the bureau's Vehicle Inspection Database (VID). The database contains information such as registration data, emissions control system data, smog check history, vehicle profiling data, station and technician data, and certificate data. The bureau can access the database to view test data on smog inspections performed at a smog station or retrieve and print records for a particular smog inspection. The bureau can also access the Vehicle Inspection Report and the BAR-OIS Test Detail created during the inspection of a vehicle.

If the vehicle passes all tests, a certificate of compliance is issued and transmitted electronically to the VID and Department of Motor Vehicles (DMV). Both the DMV and the bureau can access information stored in the database.

6. "Clean Plugging" is an illegal and fraudulent technique used to pass vehicles that should not pass smog check inspections. Clean plugging occurs when a technician plugs the BAR-OIS system into a different vehicle from the one that is being tested, for the purpose of issuing a fraudulent smog certificate of compliance.

### **Investigation Regarding Clean Plugging**

7. The following factual findings are derived from the testimony of Steve Koch, documents he compiled during his investigation, and other documentary evidence admitted in support of the allegations.

8. Mr. Koch is a program representative with the bureau, where he has worked for over 24 years. Mr. Koch has an associate of arts degree in automotive

technology; is an Automotive Service Excellence (ASE) certified master technician; and is a licensed smog check inspector and smog check repair technician.

9. Part of Mr. Koch's duties include reviewing data from smog check inspections. Mr. Koch conducted an investigation regarding data from smog check inspections performed at Truck Town Inc. by respondent between June 6, 2021, and December 14, 2022.

10. On June 6, 2021, while reviewing OIS test data from Truck Town Inc., Mr. Koch found that a 2005 Honda Accord LX, license 6AXK103, was tested and a smog certificate issued by respondent. However, the OIS test data for the vehicle showed a different communication protocol and different PID count than what is normally expected for that type of vehicle. A previous test for the same vehicle showed the communication protocol and PID count that would normally be expected for that vehicle.

11. On June 8, 2021, Mr. Koch visited Truck Town Inc. and contacted respondent about the OIS test data he observed for the smog check of the 2005 Honda Accord LX two days earlier. This was the first time Mr. Koch had ever met respondent. Mr. Koch said respondent told him something about the bar code scanner possibly not working properly. Mr. Koch checked the bar code scanner and found it was working. Mr. Koch warned respondent any further fraudulent tests could lead to disciplinary action.

12. On January 13, 2022, while reviewing OIS test data from Truck Town Inc., Mr. Koch found that a 2006 Ford F350 Super Duty, license 7Z43410, was tested and a smog certificate issued by respondent. However, the OIS test data for the vehicle showed a different communication protocol and different PID count than what is



normally expected for that type of vehicle. Mr. Koch again visited Truck Town Inc. and spoke with respondent. Mr. Koch warned respondent any further fraudulent tests could lead to disciplinary action.

13. On December 14, 2022, Mr. Koch conducted an undercover investigation, which he later documented in an investigative report. He drove to Truck Town Inc. and parked his undercover vehicle. He observed the station was dark, the gate was closed, and nothing appeared to be happening. However, when he reviewed OIS test data for the shop, it showed smog testing was actively being conducted at the shop. Mr. Koch exited his undercover vehicle and noticed some light inside the building, but it did not appear to be open. Eventually, he observed several individuals walking towards the gate. Mr. Koch recognized respondent. The gate opened. One individual carrying a backpack fled the area. Mr. Koch walked inside and saw the owner of the station, who became very "animated." When questioned, respondent told Mr. Koch that he fraudulently certified five vehicles and issued a certificate of compliance for those vehicles, but that the owner of the shop was not aware he was doing so. The five vehicles that respondent clean plugged through the use of a simulator were identified as a 2009 Ford Focus (6PKS068), a 2006 Ford Expedition (7LFD014), a 2005 Chevrolet Aveo (7EWW237), a 2008 Chevrolet Avalanche (8K89686), and a 2006 Chevrolet Suburban (1GNEC16Z16J121333). All of the fraudulent tests took place between 6:30 p.m. and 7:23 p.m., during the time Mr. Koch was present and surveilling the shop. Certificates of compliance were issued for each vehicle. Mr. Koch conducted a search of the shop and could not locate the simulator used to clean plug the vehicles, however, he hypothesized that the individual who fled with the backpack might have had the simulator inside the backpack.

## **Respondent's Testimony**

14. Respondent's testimony is summarized as follows: Respondent admitted that "everything Mr. Koch said is true," and did not dispute the allegations against him. Respondent admitted to utilizing a simulator to perform fraudulent smog checks and issuing a certificate of compliance on December 14, 2022, for the five vehicles noted above. Regarding the two vehicles that Mr. Koch alleged were fraudulently certified on June 6, 2021, and January 13, 2022, respondent denied having any information about those vehicles. When asked why he would conduct fraudulent smog check inspections, respondent said at the time, the owners were selling the shop. He was worried about being stuck without a job so the motivation was financial. He only made about \$250 for each vehicle and regrets doing so. Respondent felt bad about getting the owners of the shop in trouble. When asked about what planning he undertook in order to start performing the fraudulent inspections, respondent said he did not want to talk about it. Respondent said he is a good technician and he wishes he could go back in time because it was not worth it. He is "glad" that this happened, however, because if it had not, he "would have kept doing it."

## **LEGAL CONCLUSIONS**

1. Control and elimination of air pollutants is necessary to protect the public health and well-being, and to protect property and vegetation. (Health & Saf. Code, § 43000, subd. (b).) Reduction of vehicle emissions is important to the public health and welfare. The Automotive Repair Act and the Motor Vehicle Inspection Program are designed to protect the public. Administrative proceedings to revoke, suspend, or impose discipline on a licensee are noncriminal and nonpenal; they are not

intended to punish the licensee, but to protect the public. (*Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

## **Statutes and Regulations Applicable to Accusation**

### **BURDEN AND STANDARD OF PROOF**

2. Although a smog check inspector or technician must complete training, coursework, and pass an examination (Cal. Code Regs., tit. 16, §§ 3340.28 & 3340.29), these requirements are not similar to the extensive education, training, and testing requirements that are necessary to obtain a professional license. Smog check inspector and technician licenses are therefore considered nonprofessional or occupational licenses and proceedings to revoke such licenses are governed by the preponderance of evidence standard. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-17.)

### **RELEVANT STATUTES**

3. Health and Safety Code section 44012 requires a smog check inspection be performed in accordance with procedures prescribed by the Department.

4. Health and Safety Code section 44015 requires that a proper smog check inspection be performed before issuing a certificate of compliance.

5. Health and Safety Code section 44059 makes it unlawful to make any false statement or entry with regard to a material matter in any certificate of compliance.

6. 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, or any partner, officer, or director thereof, 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.

[11] . . . [11]

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

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

7. Health and Safety Code section 44072.8 provides: "When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

8. Health and Safety Code section 44072.10 subdivision (c), provides:

The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

- (1) Clean piping, clean plugging, clean glassing, clean tanking, or any other fraudulent inspection practice, as defined by the department.
- (2) Tampering with a vehicle emission control system or test analyzer system.
- (3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.
- (4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

## **RELEVANT REGULATIONS**

9. California Code of Regulations, title 16, section 3340.24, subdivision (c), prohibits the issuance of a fraudulent certificate of compliance.

10. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides that a smog check inspector or repair technician must inspect and test vehicles in accordance with Health and Safety Code sections 44012 and 44035.

11. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides:

No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS or OIS.

Nor shall any person enter into the EIS or OIS any false information about the vehicle being tested.

12. California Code of Regulations, title 16, section 3340.42, requires that a smog check inspection be conducted in accordance with the bureau's specifications.

### **Evaluation of Accusation**

13. Cause exists to revoke respondent's Smog Check Inspector License and Smog Check Repair Technician License pursuant to Health and Safety Code section 44072.2, subdivision (a), (c), (d), and Health and Safety Code section 44072.10 subdivision (c)(1) and (c)(4). Respondent failed to comply with the Motor Vehicle Inspection Program statutes (Health & Saf. Code, § 44012) and applicable regulations (Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a); 3340.41, subd (c); 3340.42) by performing fraudulent smog check inspections of seven vehicles (as identified in paragraphs 26 through 32 of the accusation), and issuing certificates of compliance for each. A preponderance of the evidence established that the vehicles issued a certificate of compliance on June 6, 2021, and January 13, 2022, did not have the expected communication protocol or PID counts that would be expected for the type of vehicle tested. Although a fraudulent smog check was not observed, the unexpected OIS test data is sufficient to sustain the cause for discipline with respect to those vehicles. Regarding the other five vehicles issued a fraudulent certificate of compliance on December 14, 2022, respondent admitted the truth of the allegations in the accusation and admitted he utilized a simulator to conduct the fraudulent smog checks.

### **Appropriate Level of Discipline**

14. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, the bureau must consider the disciplinary

guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev. March 2016]. These guidelines provide the recommended sanctions for various violations. The recommended discipline for issuing fraudulent inspections (Health & Saf. Code, § 44072.2, subd. (d)) is revocation. Factors in aggravation and mitigation may be considered when fashioning the appropriate measure of discipline.

15. Respondent fraudulently issued certificates of compliance to vehicles that were not properly tested. Respondent admitted to engaging in clean plugging with respect to at least five of those vehicles and using a simulator to do so. Although he expressed remorse, respondent did not provide sufficient evidence of rehabilitation. As such, the guidelines recommended discipline of revocation of respondent's licenses are required for public protection.

## **Enforcement and Prosecution Costs**

16. Complainant submitted two declarations of costs and requested cost recovery under Business and Professions Code section 125.3. The total costs in this matter are \$7,740 and are reasonable.

The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, held that, in determining costs, it is incumbent on an agency to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed would not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Ibid.*) The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable

challenge” to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct.

Applying the *Zuckerman* criteria to the \$7,740 in costs yields the following results: respondent did not receive a reduction in the severity of the discipline; respondent did not offer a good faith belief in the merits of his position or raise a “colorable challenge” to the proposed discipline; respondent did not offer any evidence regarding financial ability to pay costs; and the scope of the investigation was appropriate in light of the alleged misconduct. Given that respondent admitted Truck Town Inc. did not know about his fraudulent activities, there is no basis to reduce the costs, even though most of the causes for discipline did not pertain to respondent. The whole investigation was initiated because of respondent’s fraudulent activities, so respondent alone shall bear the cost of the investigation and enforcement of this matter.

Respondent Alex Urzua shall be responsible to pay costs to the bureau in the amount of \$7,740. However, the payment of costs shall be stayed until such time respondent seeks to reinstate his licenses or obtain another license or registration from the department. At that time, as a condition precedent to issuance of any license or registration, respondent shall pay the costs in full.

## **ORDER**

1. Smog Check Inspector License No. EO 639699 issued to respondent Alex Urzua is revoked.



2. Smog Check Repair Technician License Number EI 639699 issued to respondent Alex Urzua is revoked.

3. Respondent Alex Urzua is ordered to pay costs in the amount of \$7,740. The payment of costs shall be stayed until such time respondent seeks to reinstate his licenses or obtain another license or registration from the department. At that time, as a condition precedent to issuance of any license or registration, respondent shall pay the costs in full.

DATE: April 23, 2024



Kimberly Belvedere (Apr 23, 2024 11:19PDT)

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings