

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

In the Matter of the Accusation Against:

HECTOR EVERARDO TRUJILLO,
doing business as H & R Smog Check &
Auto Repair
Automotive Repair Dealer Registration
No. ARD 262578
Smog Check Station License No. RC
262578
Lamp Station License No. LS 262578
Brake Station License No. BS 262578,

and

HECTOR E. TRUJILLO
Smog Check Inspector License No. EO
137433
Smog Check Repair Technician License
No. EI 137433
Lamp Adjuster License No. LA 137433
Brake Adjuster License No. BA 137433,

Respondents.

Case No. 79/16-02

OAH No. 2015080048

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors on page 9, paragraphs 7 and 8, and page 12 footnote 3 of the Proposed Decision, are corrected as follows:

Page 9, paragraph 7 references "Business and Professions Code section 9884.16." The correct citation is, "Business and Professions Code section 9889.16." Thus, the sentence is corrected, as follows:

- "Business and Professions Code section 9889.16 provides:"

Page 9, paragraph 8 references "Health and Safety Code section 44972.2." The correct citation is, "Health and Safety Code section 44072.2." Thus, the sentence is corrected, as follows:

- "Health and Safety Code section 44072.2 provides in part:"

Page 12, footnote 3 references "Health & Saf. Code, § 44972.2." The correct citation is, "Health & Saf. Code, § 44072.2." Thus, the sentence is corrected, as follows:

- "(e.g. Health & Saf. Code, § 44072.2, subd. (d).)"

The technical or minor changes made above do not affect the factual or legal basis of the Proposed Decision.

This Decision shall become effective October 4, 2016.

DATED: August 26, 2016


DOREATHEA JOHNSON
Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, heard this matter on July 12, 2016, in Riverside, California.

Michael Brown, Deputy Attorney General, Department of Justice, represented petitioner, Patrick Dorais, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California.

William D. Ferreira, Attorney at Law, represented respondents H & R Smog Check and Auto Repair and Hector Everardo Trujillo.

The matter was submitted on July 13, 2016.

FACTUAL FINDINGS

Background

1. On July 15, 2010, the bureau issued Automotive Repair Registration No. ARD 262578 to Hector Everardo Trujillo, doing business as H & R Smog Check & Auto Repair (H & R Smog), located in San Bernardino. On October 20, 2010, the bureau issued Smog Check Station License No. RC 262578 to H & R Smog. On February 3, 2015, the bureau issued Lamp Station License No. LS 262578 and Brake Station License No. BS 262578 to H & R Smog.

2. In 1997, the bureau issued Advanced Emission Specialist Technician License No. EA 137433 to Mr. Trujillo. The license was renewed¹ on June 28, 2013, as Smog Check Inspector License No. EO 137433 and Smog Check Repair Technician License No. EI 137433. In 2003, the bureau issued Brake Adjuster License No. BA 137433 and Lamp Adjuster License No. LA 137433 to Mr. Trujillo.

3. There is no history of discipline against respondents' licenses or registration.

4. On July 2, 2015, complainant signed the accusation alleging 24 causes for discipline stemming from allegations that respondents issued fraudulent lamp and brake certificates for an undercover vehicle; failed to record the odometer reading on a work order; and issued a fraudulent brake certificate for an undercover vehicle. Complainant sought the revocation or suspension of respondents' licenses.

First Undercover Operation: 1998 Toyota Camry

5. On July 25, 2013, Joe Ruiz, a bureau Program Representative I assigned to the bureau's Fontana Forensic Documentation Laboratory, documented the condition of the brake, lamp, and emissions system of a 1998 Toyota Camry. As part of the documentation, Mr. Ruiz intentionally machined the right front brake rotor beyond minimum thickness specifications and machined the right rear brake drum beyond maximum diameter specifications. Additionally, Mr. Ruiz intentionally misadjusted the headlights to be out of adjustment. He also installed defective light bulbs for the left rear back-up lamp and the right rear tail light so that the lights would not illuminate. Mr. Ruiz installed tamper seals on the headlight adjustment screws and on all four wheels to indicate removal. Mr. Ruiz performed a smog inspection that the vehicle passed. Mr. Ruiz secured the vehicle in the documentation lab.

¹ Effective August 1, 2012, the regulations were amended changing Smog Check Technician licenses to Smog Check Inspector and Smog Check Repair Technician licenses.

On September 13, 2013, Mr. Ruiz transferred custody of the Toyota Camry to bureau Program Representative I Ronald Norman. Mr. Norman then transferred the Toyota to Alfred Denno, bureau Program Representative II, and instructed him to take the vehicle to H & R Smog. At approximately 9:00 a.m., Mr. Denno arrived at H & R Smog and spoke to a Hispanic male in his mid-30s. He requested a brake, lamp, and smog inspection. The individual at H & R Smog told Mr. Denno that the services would cost \$100. Mr. Denno filled out information on a document and signed the document as requested. Mr. Denno did not receive a copy of the document he had signed and received no other written estimate.

Mr. Denno observed a female, later identified as Ruth Trujillo,² Mr. Trujillos's daughter, perform a smog inspection on the vehicle. The male employee who greeted Mr. Denno then informed him that the vehicle's taillight was burned out. The individual stated that he did not have a replacement bulb, but would certify the lights on the vehicle anyway. The individual instructed Mr. Denno to obtain a new bulb and explained how to install the bulb. The individual made no comments about the brake system. Mr. Denno paid him \$100 and was provided a smog check vehicle inspection report, brake certificate, and lamp certificate. Mr. Denno did not observe anyone fill out the certificates. No other individual other than the male Mr. Denno spoke to participated in the inspection of the vehicle. Respondent, Mr. Trujillo, was not present at the facility. During the time the vehicle was inspected, Mr. Denno observed that H & R's lamp test equipment was never accessed or moved to inspect the vehicle's headlamps. Additionally, the vehicle was never lifted off the ground, the vehicle's wheels were never removed for any type of brake inspection, and the vehicle was never road tested.

Mr. Denno left the station at approximately 9:24 a.m. and returned the vehicle to Mr. Norman, who returned it to Mr. Ruiz. On September 18, 2013, Mr. Ruiz inspected the vehicle and determined that the tamper seals on the wheels were intact indicating the wheels had not been removed. As such, the brake pads could not be accessed to determine the rotor thickness. Mr. Ruiz also found that the right rear tail lamp and backup lamps remained inoperative and the front headlights were out of adjustment. The tamper seals he installed on the front headlight adjusting bolts were intact.

Mr. Ruiz concluded that a smog check vehicle inspection was properly performed. However, repairs were needed for the vehicle to properly receive brake and lamp certificates.

6. H & R Smog issued brake and lamp certificates of adjustment on the bureau's Toyota Camry when in fact the brake and lamp systems on the vehicle should have failed if properly performed inspections were conducted.

² In 2010, the bureau issued Ruth Trujillo an Advanced Emission Specialist Technician License. In 2014, Ms. Trujillo renewed the license as a Smog Check Inspector and Smog Check Technician.

Second Undercover Operation: 2001 Honda Prelude

7. On October 16, 2013, Randy Castleman, bureau Program Representative I, took custody of a bureau-owned 2001 Honda Prelude. Mr. Norman instructed Mr. Castleman to take the vehicle to H & R Smog and request a smog check, brake, and lamp inspection. Mr. Castleman arrived at H & R Smog at approximately 10:12 a.m. and spoke to Ruth Trujillo. She informed him that the work would cost \$100. She provided him an estimate which Mr. Castleman signed. The estimate did not contain an odometer reading. Mr. Castleman observed as Ms. Trujillo drove the vehicle into the service bay and saw a Hispanic male in his 30s open the hood of the vehicle. Ms. Trujillo then came into the waiting area and told Mr. Castleman that there was a problem with the headlights and reverse lights. The male then told Mr. Castleman that the vehicle would not pass in the current condition and he would have to get the lights fixed somewhere else. Mr. Castleman asked about the brake inspection and was told that the shop only does lamp and brake inspections together as a pair. Ms. Trujillo performed a smog inspection. Ms. Trujillo provided Mr. Castleman with a smog check vehicle inspection report and invoice. The invoice contained the vehicle's odometer reading.

Mr. Norman indicated that there were no violations identified other than the failure to record the odometer reading on the signed estimate. Mr. Trujillo was not present at the facility during this operation.

Third Undercover Operation: 2002 Honda Accord

8. On November 8, 2013, Mr. Ruiz began documenting the condition of a 2002 Honda Accord. As part of the documentation, Mr. Ruiz intentionally machined the right front brake rotor and right rear brake rotor beyond minimum thickness specifications. Mr. Ruiz correctly adjusted the headlight aim. Mr. Ruiz installed tamper seals on the headlight adjustment screws and on all four wheels to indicate removal. Mr. Ruiz performed a smog inspection, which the vehicle passed. He secured the vehicle in the documentation lab.

On December 12, 2013, Mr. Ruiz transferred custody of the Honda Accord to Mr. Norman. Mr. Norman then transferred the Honda to Marc Ortega, bureau Program Representative II, and instructed him to take the vehicle to H & R Smog. At approximately 10:13 a.m., Mr. Ortega arrived at H & R Smog and spoke to an individual Mr. Ortega later identified through a photographic lineup as Hector Alan Trujillo, Mr. Trujillo's son. Mr. Ortega requested a brake, lamp, and smog inspection. Hector Alan Trujillo instructed Mr. Ortega to drive the vehicle around to the service bay. Mr. Ortega was not provided a written copy of the estimate. Mr. Ortega observed another individual, later identified as Ruth Trujillo, perform a smog check inspection. After completing the smog inspection, Ms. Trujillo provided Mr. Ortega a smog check vehicle inspection report, a brake certificate, and a lamp certificate. Mr. Ortega paid \$100 as requested. Mr. Ortega noted that the two individuals were the only two people present at the facility. Respondent was not at the facility. Mr. Ortega observed that at no time did anyone at H & R Smog lift the vehicle off the ground, remove the vehicle's wheels to perform any type of brake inspection, and the

vehicle was never road tested. Additionally, at no time was any equipment used to check the headlamp adjustment and vehicle's lights were never turned on for any type of lamp inspection.

Mr. Ortega left the station at approximately 10:31 a.m. and returned the vehicle to Mr. Norman, who returned it to Mr. Ruiz. On December 17, 2013, Mr. Ruiz inspected the vehicle and determined that the tamper seals on the wheels were intact indicating the wheels had not been removed. As such, the brake pads could not be accessed to determine the rotor thickness.

Mr. Ruiz concluded that a smog check vehicle inspection was properly performed. However, repairs were needed for the vehicle to receive a brake certificate.

9. H & R Smog issued a brake certificate of adjustment on the bureau's Honda Accord when in fact the brake system should have failed if a properly performed inspection was conducted. Additionally, H & R Smog issued a lamp certificate without performing an inspection of the lamp system.

The Bureau's Subsequent Investigation

10. On January 15, 2014, Mr. Norman and bureau supervisor Armando Loyola went to H & R Smog. They met with Hector Alan Trujillo and Ruth Trujillo. Hector Alan Trujillo said that his father, Mr. Trujillo, was the only brake and lamp adjuster employed at H & R Smog and the only person who performs brake and lamp inspection. Hector Alan Trujillo said his father was not available. Mr. Norman asked Hector Alan Trujillo to contact his father to schedule an appointment with bureau representatives. Hector Alan Trujillo agreed.

On January 17, 2014, Hector Alan Trujillo called Mr. Norman and told him that his father would be at H & R Smog on January 21, 2014, and that would be the best time to meet with him. On January 21, 2014, Hector Alan Trujillo called Mr. Norman and said that his father was ill and had gone to a hospital in Tijuana. On January 28, 2014, Mr. Norman called Hector Alan Trujillo who said his father was back at home but having health problems. Mr. Norman asked Hector Alan Trujillo to come to the bureau field office to answer some questions. At the field office, Hector Alan Trujillo confirmed that his father was the only person who performs brake and lamp inspections at H & R Smog. Mr. Norman asked Hector Alan Trujillo to review the brake and lamp certificates H & R Smog provided to the undercover operators. Hector Alan Trujillo said the certificates were filled out and signed by his father. Hector Alan Trujillo was asked if his father pre-signs certificates in case he is not there, and he responded that his father "is almost always" at the station.

Mr. Trujillo was never interviewed by bureau representatives regarding the situation at H & R Smog.

Respondents Evidence

11. Respondent, Mr. Trujillo, is 63 years old. He has been a smog check inspector since 1997. He testified he has owned H & R Smog since 1999 and has had no history of license discipline against his licenses. Mr. Trujillo did not contest the facts surrounding the bureau's three undercover operations. Mr. Trujillo first learned that his son, Hector Alan Trujillo, had been performing brake and lamp inspections when he received the accusation. Before this, Mr. Trujillo said he had been completely unaware that his son had issued fraudulent inspection certificates. He immediately confronted his son and threatened to call the police. Mr. Trujillo said his son fled to Idaho, and he has not heard from him since. Mr. Trujillo said he was completely surprised to hear of the allegations. He had not been contacted by bureau personnel and his son never told him bureau representatives were trying to speak to him. He denied that any of the certificates issued for the undercover vehicles were in his handwriting or contained his signature. He said he never pre-signed certificates and only filled out a certificate after inspecting a vehicle. Mr. Trujillo testified he would normally arrive at the station at 11:00 a.m. All of the undercover operations occurred before Mr. Trujillo came in for work.

Mr. Trujillo said he spoke to his daughter Ruth, who denied any knowledge of wrongdoing by her brother. Mr. Trujillo believed her, and Ruth continued to work for him. However, after Mr. Trujillo's attorney told him that Ruth was involved in the fraudulent activity, he confronted Ruth and fired her. This occurred several days before the hearing. Mr. Trujillo said he was scared about the hearing and did not return his attorney's calls until the week before.

Mr. Trujillo said he is currently the only employee at H & R Smog. If he is allowed to retain his licenses, he will hire someone who has all three licenses. Mr. Trujillo said he now stores the certificate booklets in a safe to prevent unauthorized access. Mr. Trujillo believed his son and daughter took advantage of him. He said that brake and lamp inspections are the most lucrative part of his business and he might have to close if those licenses are revoked. He supports his wife who does not work. The shop currently only performs smog, brake, and lamp inspections; it does not perform any automotive repairs. Respondent said he would be willing to comply with terms of probation if H & R Smog's brake and lamp licenses were placed on probation.

Enforcement and Prosecution Costs

12. Complainant submitted two declarations of costs and requested cost recovery under Business and Professions Code section 125.3. William D. Thomas, Program Manager II, Case Management & Enforcement Statistics, certified that the Bureau incurred \$16,044.57 in total costs related to the bureau's investigation into the allegations in the accusation against respondents. Mr. Thomas's declaration merely recited that unnamed Program Representatives I and II spent a total of 218.5 hours at varying rates per hour on "investigator costs." There is no description of the nature of the work performed. This description is insufficient to allow for a finding that the costs sought for the bureau's investigation services

are reasonable costs. (Cal. Code of Regs, tit. 1, § 1042, subd. (b).) Therefore, no investigative costs are awarded.

The certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution in the amount of \$12,117.50. The evidence established those costs were reasonably incurred and appropriate for the scope of the investigation and prosecution. The certification complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

LEGAL CONCLUSIONS

1. 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.)

Burden and Standard of Proof

2. “Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.” (Evid. Code, § 115.) Obtaining a smog check station license (Health & Saf. Code, §§ 44014 and 44072.2) and an automotive repair dealer registration (Bus. & Prof. Code, §§ 9884 and 9889) requires no more than a showing of good moral character, the absence of a prior disciplinary history related to the license or registration being sought, and proper zoning and the possession of required equipment and other devices; registration and licensure does not require extensive education, training or testing. Likewise, the requirements for smog check technician, brake adjuster, and lamp adjuster licenses are not similar to the extensive education, training and testing requirements that are necessary to obtain a professional license. These licenses are nonprofessional or occupational licenses and proceedings to revoke them are governed by the preponderance of the evidence standard. (Evid. Code, § 115; *Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-17.)

Relevant Disciplinary Statutes

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 . . . revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician,

employee, partner, officer, or member of the automotive repair dealer.

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

(2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

(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.

(5) Conduct constituting gross negligence.

(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 9889.3 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:

(a) Violates any section of the Business and Professions Code that relates to his or her licensed activities.

[¶] . . . [¶]

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

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

[¶] . . . [¶]

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

. . .

5. Business and Professions Code section 9889.9 provides:

When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

6. Business and Professions Code section 9884.9, subdivision (a), requires an automotive repair dealer to give to the customer a written estimated price for labor and parts necessary for a specific job.

7. Business and Professions Code section 9884.16 provides:

Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity [sic] with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

8. Health and Safety Code section 44972.2 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.

[¶] . . . [¶]

- (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. . . .

9. 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.

Relevant Regulations

10. California Code of Regulations, title 16, section 3371 prohibits a repair station from making any false or misleading statement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading.

11. California Code of Regulations, title 16, section 3353, subdivision (a), requires a dealer give to each customer a written estimated price for parts and labor for a specific job.

12. California Code of Regulations, title 16, section 3305, subdivision (a), outlines the requirements for adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance.

13. California Code of Regulations, title 16, section 3316, subdivision (d)(2), provides: "Where all of the lamps, lighting equipment, and related electrical systems on a vehicle have been inspected and found to be in compliance with all requirements of the Vehicle Code and bureau regulations, the certificate shall certify that the entire system meets all of those requirements."

14. California Code of Regulations, title 16, section 3321, subdivision (c)(2), provides: "Where the entire brake system on any vehicle has been inspected or tested and found to be in compliance with all requirements of the Vehicle Code and bureau regulations, and the vehicle has been road-tested, the certificate shall certify that the entire system meets all such requirements."

Employee Misconduct

15. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct, and he is responsible for the acts of his agents or employees done in the course of his business. A licensee may not insulate himself from regulation by electing to function through employees or independent contractors. (*Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.)

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Cause Exists to Impose Discipline

H & R SMOG'S REPAIR DEALER REGISTRATION

16. Cause exists to discipline H & R Smog's automotive repair dealer registration for violations of Business and Professions code sections 9884.7, subdivisions (a)(1) and (a)(4), and California Code of Regulations, title 16, section 3371. A preponderance of evidence established that H & R Smog employees falsely certified two brake certificates and one lamp certificate after failing to perform inspections conducted in accordance with the Vehicle Code and regulations [first and fifteenth causes for discipline] and committed fraudulent acts by obtaining payment for the inspections without properly inspecting the vehicle [second and sixteenth causes for discipline].

17. Cause exists to discipline H & R Smog's automotive repair dealer registration for violations of Business and Professions Code sections 9884.7, subdivision (a)(5). "Gross negligence" long has been defined as either a "want of even scant care" or "an extreme departure from the ordinary standard of conduct." (*Gore v. Bd. of Medical Quality Assurance* (1980) 110 Cal.App.3d 184, 195-198; *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753-754.) Expert opinion testimony is required to prove or disprove that a professional performed in accordance with the prevailing standard of care, except in cases where the negligence is obvious to laymen. (*Garibay v. Hemmat* (2008) 161 Cal. App. 4th 735, 741.) The fraudulent issuance of inspection certificates after failing to conduct inspections constitutes gross negligence [third and seventeenth causes for discipline].

18. Cause exists to discipline H & R Smog's automotive repair dealer registration for violations of Business and Professions Code sections 9884.7, subdivisions (a)(2) and (a)(3) and California Code of Regulations, title 16, section 3353, subdivision (a). A preponderance of evidence established that H & R Smog failed to provide the operator of the 1998 Toyota Camry a copy of the estimate as soon as the operator signed the document [fourth cause for discipline] and failed to record the odometer reading on a work order for the 2001 Honda Prelude [fourteenth cause for discipline].

19. Cause exists to discipline H & R Smog's automotive repair dealer registration for violations of Business and Professions Code section 9884.7, subdivision (a)(6), for failure to comply with provisions of the Code. A preponderance of evidence established that H & R Smog failed to provide the operator of the Toyota Camry with a written estimated price for the job (Bus. & Prof. Code, § 9884.9, subd (a)) and issued brake and lamp certificates for that vehicle when the tail and backup lights did not illuminate, the headlights were not within specification, and a brake rotor and drum were out of manufacturer's specifications (Bus. & Prof. Code, § 9889.16) [fifth cause for discipline]. A preponderance of evidence established that H & R Smog failed to provide the operator of the Honda Accord with a written estimated price for the job (Bus. & Prof. Code, § 9884.9, subd (a)); issued a brake certificate for that vehicle when two brake rotors were out of manufacturer's specifications (Bus. & Prof. Code, § 9889.16); and issued a lamp certificate without performing any lamp inspection on the vehicle (*Ibid.*) [eighteenth cause for discipline].

20. Cause exists to discipline H & R Smog's automotive repair dealer registration for violations of Business and Professions Code section 9884.7, subdivision (a)(6), for failure to comply with bureau regulations. A preponderance of evidence established that H & R Smog issued certificates after failing to perform brake and lamp inspections in accordance with regulations (Cal. Code Regs., tit. 16, §§ 3305, subd. (a), 3316, subd. (d)(2), & 3321, subd. (c)(2)) [sixth and nineteenth causes for discipline].

H & R SMOG'S BRAKE AND LAMP STATION LICENSES

21. Cause exists to discipline H & R Smog's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivisions (a), (c), (d) and (h). H & R smog violated sections of the Code relating to its licensed activities [seventh, ninth, twentieth, and twenty-first causes for discipline]; failed to comply with bureau regulations [eighth cause for discipline]; and committed acts involving dishonesty, fraud, or deceit [tenth and twenty-second causes for discipline].

HECTOR E. TRUJILLO'S BRAKE AND LAMP ADJUSTER LICENSES

22. Cause does not exist to discipline Mr. Trujillo's brake and lamp adjuster licenses under Business and Professions Code section 9889.3, subdivisions (a), (c), or (d). The weight of the evidence established that Mr. Trujillo was not present when the inspections were performed for the three undercover vehicles and had no knowledge that his employees had issued brake and lamp certificates with his forged signature and license number. The eleventh, twelfth, thirteenth, twenty-third, and twenty-fourth causes for discipline are dismissed.³

Probation is the Appropriate Level of Discipline

23. The bureau enacted disciplinary guidelines incorporated in regulation by California Code of Regulations, title 16, section 3395.4. These guidelines provide a range of recommended sanctions for various violations. The minimum recommended discipline for the most serious violation, fraudulent conduct (Bus. & Prof. Code, § 9884.7, subd. (d)), is stayed revocation, a 30-day suspension, and five years of probation. Factors in aggravation and mitigation may be considered when fashioning the appropriate measure of discipline. In aggravation, the unlawful acts were part of a pattern and practice. In mitigation, Mr. Trujillo fired the offending employees and is now solely responsible for conducting brake and lamp inspections. He also has secured the blank brake and lamp certificates in his safe.

Mr. Trujillo credibly testified that he was unaware of the fraudulent conduct committed by his employees outside of his presence. Mr. Trujillo's two children took

³ Although complainant requested the revocation of the station's smog check station license and Mr. Trujillo's smog technician license, the accusation did not contain a cause for discipline to revoke either license (e.g. Health & Saf. Code, § 44972.2, subd. (d).) As such, discipline against these licenses was not considered in this decision.

advantage of him and placed his livelihood in jeopardy. Although this does not relieve him of responsibility for monitoring the activities of his shop, it is a mitigating factor that must be considered in assessing the level of discipline required for public protection. Other than the fraudulent conduct, Mr. Trujillo has no blemishes on his record after working in the automotive industry for approximately 20 years. Under these circumstances, the public will be protected by suspending H & R Smog's brake and lamp station licenses for 90 days; with 80 days stayed, and placing the brake and lamp station licenses and repair dealer registration on probation for a period of three years.

Costs of Investigation and Enforcement

24. Complainant is seeking recovery of the reasonable costs of prosecution in the amount of \$12,117.50. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. The court further held in *Zuckerman* that it was incumbent on the board to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing."

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. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

Applying the *Zuckerman* criteria, respondents received a reduction in the severity of the discipline imposed, they had a good faith belief in the merits of their position, and they raise a "colorable challenge" to the proposed discipline. No evidence was received about respondents' ability to pay costs. Prosecution costs are reduced to \$3,000.

ORDER

Automotive Repair Registration No. ARD 262578, Lamp Station License No. LS 262578, and Brake Station License No. BS 262578 issued to Hector Evernardo Trujillo, doing business as H & R Smog Check & Auto Repair are revoked; the revocation is stayed, and the licenses are placed on probation for three years. Additionally, Lamp Station License No. LS 262578 and Brake Station License No. BS 262578 are suspended for 90 days; with 80 days stayed. During the period of probation, respondent shall:

1. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

2. Respondent shall post a prominent sign, provided by the bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

3. Respondent shall reimburse the bureau a total of \$3,000 for the bureau's prosecution costs. Respondent shall be permitted to pay these costs in a payment plan approved by the bureau, with payments to be completed no later than three months prior to the end of the probation term.

4. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the bureau, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

5. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

6. Provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

7. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration and/or suspend or revoke the licenses.

Dated: July 27, 2016

DocuSigned by:

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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 79/16-02

13 **HECTOR EVERARDO TRUJILLO**
14 **aka HECTOR E TRUJILLO DBA H & R**
15 **SMOG CHECK & AUTO REPAIR**
703 S Gifford Avenue, Unit 201
San Bernardino, CA 92408
16 Automotive Repair Dealer Registration No.
ARD 262578
17 Smog Check Station License No. RC 262578
Lamp Station License No. LS 262578
Brake Station License No. BS 262578

A C C U S A T I O N

18 and

19 **HECTOR E TRUJILLO**
715 E Mill Street
20 San Bernardino, CA 92408
Smog Check Inspector License No. EO
21 137433
Smog Check Repair Technician License
22 Number EI 137433 (formerly Advanced
Emission Specialist Technician License No.
23 EA 137433)
Brake Adjuster License No. BA 137433
24 Lamp Adjuster License No. LA 137433

25 Respondents.

1 Complainant alleges:

2 **PARTIES/LICENSE INFORMATION**

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

5 **Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair**

6 **Automotive Repair Dealer Registration**

7 2. On or about July 15, 2010, the Bureau issued Automotive Repair Dealer Registration
8 Number ARD 262578 ("registration") to Hector Everardo Trujillo aka Hector E Trujillo dba H &
9 R Smog Check & Auto Repair ("Respondent H & R Smog"). The registration was in full force
10 and effect at all times relevant to the charges brought herein and will expire on June 30, 2016,
11 unless renewed.

12 **Smog Check Station License**

13 3. On or about October 20, 2010, the Bureau of Automotive Repair issued Smog Check
14 Station License Number RC 262578 ("station license") to Respondent H & R Smog. The station
15 license was in full force and effect at all times relevant to the charges brought herein and will
16 expire on June 30, 2016, unless renewed.

17 **Lamp Station License**

18 4. On or about February 3, 2012, the Bureau of Automotive Repair issued Lamp Station
19 License Number LS 262578 to Respondent H & R Smog. The lamp station license was in full
20 force and effect at all times relevant to the charges brought herein and will expire on June 30,
21 2016, unless renewed.

22 **Brake Station License**

23 5. On or about February 3, 2012, the Bureau issued Brake Station License Number BS
24 262578 to Respondent H & R Smog. The brake station license was in full force and effect at all
25 times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

26 ///

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1 **Hector E Trujillo**

2 **Technician License/Inspector License**
3 **(formerly Advanced Emission Specialist Technician License Number EA 137433)**

4 6. In or about 1997, the Bureau issued Advanced Emission Specialist Technician License
5 Number EA 137433 to Hector E Trujillo ("Respondent Trujillo"). Respondent Trujillo's
6 Advanced Emission Specialist Technician License was due to expire on June 30, 2013. However,
7 pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e) ¹, the license
8 was renewed, pursuant to Respondent Trujillo's election, as Smog Check Inspector License
9 Number EO 137433 ("inspector license"), effective June 28, 2013 and Smog Check Repair
10 Technician License Number EI 137433 ("repair technician license"), effective October 16, 2013.
11 Respondent Trujillo's inspector license and repair technician license were in full force and effect
12 at all times relevant to the charges brought herein and will expire on June 30, 2017, unless
13 renewed.

14 **Brake Adjuster License**

15 7. In or about 2003, the Bureau issued Brake Adjuster License Number BA 137433 to
16 Respondent Trujillo. Respondent Trujillo's brake adjuster license was in full force and effect at
17 all times relevant to the charges brought herein and will expire on June 30, 2019, unless renewed.

18 **Lamp Adjuster License**

19 8. In or about 2003, the Bureau issued Lamp Adjuster License Number LA 137433 to
20 Respondent Trujillo. Respondent Trujillo's lamp adjuster license was in full force and effect at all
21 times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

22 **JURISDICTION**

23 9. Business and Professions Code ("Code") section 9884.7 provides that the director
24 may revoke an automotive repair dealer registration.

25
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 automotive repair dealer, which are done by the automotive repair dealer or any automotive
2 technician, employee, partner, officer, or member of the automotive repair dealer.

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

6 “(2) Causing or allowing a customer to sign any work order that does not state the repairs
7 requested by the customer or the automobile's odometer reading at the time of repair.

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

10 “(4) Any other conduct that constitutes fraud.

11 “(5) Conduct constituting gross negligence.

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

14 17. Section 9884.9 of the Code states:

15 “(a) The automotive repair dealer shall give to the customer a written estimated price for
16 labor and parts necessary for a specific job. No work shall be done and no charges shall accrue
17 before authorization to proceed is obtained from the customer. No charge shall be made for work
18 done or parts supplied in excess of the estimated price without the oral or written consent of the
19 customer that shall be obtained at some time after it is determined that the estimated price is
20 insufficient and before the work not estimated is done or the parts not estimated are supplied.
21 Written consent or authorization for an increase in the original estimated price may be provided
22 by electronic mail or facsimile transmission from the customer. The bureau may specify in
23 regulation the procedures to be followed by an automotive repair dealer if an authorization or
24 consent for an increase in the original estimated price is provided by electronic mail or facsimile
25 transmission. If that consent is oral, the dealer shall make a notation on the work order of the
26 date, time, name of person authorizing the additional repairs and telephone number called, if any,
27 together with a specification of the additional parts and labor and the total additional cost, and
28 shall do either of the following:

1 "(1) Make a notation on the invoice of the same facts set forth in the notation on the work
2 order .

3 "(2) Upon completion of the repairs, obtain the customer's signature or initials to an
4 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
5 repairs, in the following language:

6 "I acknowledge notice and oral approval of an increase in the original estimated price.

7 _____
8 (signature or initials)"

9 "Nothing in this section shall be construed as requiring an automotive repair dealer to give a
10 written estimated price if the dealer does not agree to perform the requested repair."

11 18. Section 9889.1 of the Code states:

12 "Any license issued pursuant to Articles 5 and 6 [commencing with section 9887.1 of the
13 Automotive Repair Act], may be suspended or revoked by the director. The director may refuse
14 to issue a license to any applicant for the reasons set forth in Section 9889.2. The proceedings
15 under this article shall be conducted in accordance with Chapter 5 (commencing with Section
16 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all
17 the powers granted therein."

18 19. Section 9889.3 of the Code states:

19 "The director may suspend, revoke, or take other disciplinary action against a license as
20 provided in this article [Article 7 (commencing with section 9889.1) of Chapter 20.3 of Division
21 3 of the Business and Professions Code] if the licensee or any partner, officer, or director thereof:

22 "(a) Violates any section of the Business and Professions Code which relates to his or her
23 licensed activities.

24

25 "(c) Violates any of the regulations promulgated by the director pursuant to this chapter [the
26 Automotive Repair Act].

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

28

1 "(h) Violates or attempts to violate the provisions of this chapter relating to the particular
2 activity for which he or she is licensed.

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

7 21. Section 9889.16 of the Code states:

8 "Whenever a licensed adjuster in a licensed station upon an inspection or after an
9 adjustment, made in conformity with the instructions of the bureau, determines that the lamps or
10 the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when
11 requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form
12 prescribed by the director, which certificate shall contain the date of issuance, the make and
13 registration number of the vehicle, the name of the owner of the vehicle, and the official license of
14 the station."

15 REGULATORY PROVISIONS

16 22. California Code of Regulations, title 16, section 3305 states, in pertinent part:

17 (a) Performance Standards. All adjusting, inspecting, servicing, and repairing of brake
18 systems and lamp systems shall be performed in official stations in accordance with current
19 standards, specifications, instructions, and directives issued by the bureau and by the
20 manufacturer of the device or vehicle.

21 23. California Code of Regulations, title 16, section 3316 states, in pertinent part:

22 (d)(2) Inspection of the Entire Lighting System. "Where all of the lamps, lighting
23 equipment, and related electrical systems on a vehicle have been inspected and found in
24 compliance with all requirements of the Vehicle Code and bureau regulations, the certificate shall
25 certify that the entire system meets all such requirement."

26 24. California Code of Regulations, title 16, section 3321 states, in pertinent part:

27 (c)(2) Inspection of the Entire Brake System. "Where the entire brake system on any
28 vehicle has been inspected or tested and found in compliance with all requirements of the

1 Vehicle Code and bureau regulations, and the vehicle has been road-tested, the certificate
2 shall certify that the entire system meets all such requirements.”

3 25. California Code of Regulation, title 16, section 3353, subdivision (a), states that
4 “No work for compensation shall be commenced and no charges shall accrue without
5 specific authorization from the customer in accordance with the following requirements:

6 “(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
7 estimated price for parts and labor for a specific job.”

8 26. California Code of Regulation, title 16, section 3371, states:

9 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any
10 false or misleading statement or advertisement which is known to be false or misleading, or which
11 by the exercise of reasonable care should be known to be false or misleading.”

12 **COST RECOVERY**

13 27. Section 125.3 of the Code provides, in pertinent part, that a board may request the
14 administrative law judge to direct a licensee found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 **UNDERCOVER OPERATION NO. 1: 1998 TOYOTA**

18 28. On September 13, 2013, an undercover operator of the Bureau ("operator") took the
19 Bureau's 1998 Toyota vehicle to Respondent H & R Smog's facility and requested a smog, brake
20 and lamp inspections. The vehicle defects included a brake system with the right front brake rotor
21 deliberately machined beyond minimum thickness specifications and the right rear brake drum
22 was deliberately machined beyond maximum diameter specifications. The headlamps were
23 deliberately misadjusted, the left rear backup light and right rear tail light were inoperative.

24 29. When the operator arrived at Respondent H & R Smog's facility, he was greeted by a
25 male employee. The operator informed the male employee that he needed a smog, brake and
26 lamp inspections. The male employee stated that the services would cost \$100.00. The male
27 employee provided the operator with a blank document and asked the operator to fill out the
28 information and sign it. The operator was not provided a copy of the estimate. Respondent

1 Trujillo performed the brake and lamp inspections and issued brake and lamp certificates. The
2 operator paid \$100.00 and was provided with a Smog Check Vehicle Inspection Report, Brake
3 Certificate Number [REDACTED] and Lamp Certificate Number [REDACTED] and a yellow and pink
4 copy of the unnumbered invoice.

5 30. The operator observed that at no point was the headlamp aiming equipment ever
6 accessed or used to inspect the headlamp adjustment on the Bureau's vehicle. Additionally, the
7 vehicle was never lifted off the ground and the wheels were not removed for any type of brake
8 inspection. The vehicle also was not road tested by anyone at Respondent H & R Smog's
9 Facility.

10 31. On September 18, 2013, a Bureau representative re-inspected the vehicle and found
11 that none of the wheels were removed from the vehicle, the right front brake rotor and the right
12 rear brake drum were out of the manufacturer's specification. In addition, the re-inspection of the
13 vehicle revealed that the right rear tail light and left rear back up light do not illuminate. The
14 Bureau representative also found that the left and right headlamps aim were not within
15 manufacturer's specification.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue and Misleading Statement)**

18 32. Respondent H & R Smog's registration is subject to discipline under Code section
19 9884.7, subdivision (a)(1) and California Code of Regulation, title 16, section 3371, in that on or
20 about September 13, 2013, regarding the 1998 Toyota vehicle, Respondent H & R Smog made or
21 authorized statements which it knew or in the exercise of reasonable care should have known to
22 be untrue or misleading, as follows:

23 a. Respondent H & R Smog certified under penalty of perjury on Brake Certificate
24 Number [REDACTED] that the applicable inspection was performed on the brake system when, in
25 fact, Respondent H & R Smog's adjuster, Respondent Trujillo, failed to inspect the brake system
26 on the vehicle, as evidenced by his failure to remove the right front wheel and the right rear brake
27 drum.

28 ///

b. Respondent H & R Smog certified under penalty of perjury on Brake Certificate Number [REDACTED] that the right front brake rotor and the right rear brake drum were within manufacturer's specification.

c. Respondent H & R Smog certified under penalty of perjury on Lamp Certificate Number [REDACTED] that the applicable adjustments had been performed on the lamp system when, in fact, the right rear tail light and left rear back up light do not illuminate. In addition, both front headlamps had not been adjusted.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

33. Respondent H & R Smog's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that on or about September 13, 2013, regarding the 1998 Toyota vehicle, Respondent H & R Smog committed acts that constitute fraud, as follows:

a. Respondent H & R Smog obtained payment from the operator for performing the applicable inspections and adjustments on the vehicle's brake and lamp systems as specified by the Bureau and in accordance with the Vehicle Code when, in fact, Respondent H & R Smog failed to perform the necessary inspections.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence)

34. Respondent H & R Smog's registration is subject to discipline under Code section 9884.7, subdivision (a)(5), in that on or about September 13, 2013, regarding the 1998 Toyota vehicle, Respondent H & R Smog committed acts constituting gross negligence, in that Respondent's adjuster, Respondent Trujillo, failed to properly inspect the vehicle's brake and lamp systems and issued Brake Certificate [REDACTED] and Lamp Certificate Number [REDACTED], indicating that the vehicle's brake and lamp systems were in satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Provide a Copy of a Signed Document)**

3 35. Respondent H & R Smog's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(3) and California Code of Regulation, title 16, section 3353, subdivision
5 (a), in that on or about September 13, 2013, regarding the 1998 Toyota vehicle, Respondent H &
6 R Smog failed to provide the operator with a copy of the estimate as soon as the operator signed
7 the document.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with the Code)**

10 36. Respondent H & R Smog's registration is subject to discipline pursuant to Code
11 section, subdivision 9884.7(a)(6), in that on or about September 13, 2013, regarding the 1998
12 Toyota vehicle, Respondent H & R Smog failed to comply with provisions of that Code in the
13 following material respects:

14 a. **Section 9884.9, subdivision (a):** Respondent H & R Smog failed to provide the
15 operator with a written estimated price for parts and labor for a specific job.

16 b. **Section 9889.16:**

17 i. Respondent Trujillo issued Brake Certificate Number [REDACTED] for the
18 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
19 the Vehicle Code, in that the right front brake rotor and the right rear brake drum were out of
20 manufacturer's specifications.

21 ii. Respondent Trujillo issued Lamp Certificate Number [REDACTED] for the
22 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
23 the Vehicle Code, in that the right rear tail light and left rear back up light do not illuminate.

24 iii. Respondent Trujillo issued Lamp Certificate Number [REDACTED] for the
25 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
26 the Vehicle Code, in that the left and right headlamps aim were not within specifications.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 37. Respondent H & R Smog's registration is subject to discipline pursuant to Code
4 section 9884.7, subdivision (a)(6), in that on or about September 13, 2013, regarding the 1998
5 Toyota vehicle, Respondent H & R Smog failed to comply with provisions of California Code of
6 Regulations, title 16, in the following material respects:

7 a. **Section 3305, subdivision (a):** Respondent Trujillo failed to perform a brake and
8 lamp inspection in accordance with the vehicle's manufacturer standards and/or current standards,
9 specifications, recommended procedures, and/or directives issued by the Bureau.

10 b. **Section 3316, subdivision (d)(2):** Respondent Trujillo issued Lamp Certificate
11 Number [REDACTED], certifying that the vehicle's lamp system had been inspected and was in
12 satisfactory condition when, in fact, it was not.

13 c. **Section 3321, subdivision (c)(2):** Respondent Trujillo issued Brake Certificate
14 Number [REDACTED], certifying that the vehicle's brake system had been inspected and was in
15 satisfactory condition when, in fact, it was not.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code)**

18 38. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
19 under Code section 9889.3, subdivision (a), in that on or about September 13, 2013, regarding the
20 1998 Toyota vehicle, Respondent H & R Smog violated sections of the Code, relating to its
21 licensed activities, as more particularly set forth above in paragraph 34.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 39. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
25 under Code section 9889.3, subdivision (c), in that on or about September 13, 2013, regarding the
26 1998 Toyota vehicle, Respondent H & R Smog failed to comply with provisions of California
27 Code of Regulations, title 16, as more particularly set forth above in paragraph 35.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 40. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
4 under Code section 9889.3, subdivisions (a) and (h), in that on or about September 13, 2013,
5 regarding the 1998 Toyota vehicle, Respondent H & R Smog violated Code section 9889.16
6 relating to his licensed activities, as more particularly set forth above in paragraph 37.

7 **TENTH CAUSE FOR DISCIPLINE**

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

9 41. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
10 pursuant to Code section 9889.3, subdivision (d), in that on or about September 13, 2013,
11 regarding the 1998 Toyota vehicle, Respondent H & R Smog committed acts involving
12 dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in
13 paragraphs 28, 29, 30 and 31.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Code)**

16 42. Respondent Trujillo's brake and lamp adjuster licenses are subject to discipline under
17 Code section 9889.3, subdivision (a), in that on or about September 13, 2013, regarding the 1998
18 Toyota vehicle, Respondent Trujillo violated sections of the Code, relating to his licensed
19 activities, as more particularly set forth above in paragraph 36.

20 **TWELFTH CAUSE FOR DISCIPLINE**

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

22 43. Respondent Trujillo's brake and lamp adjuster licenses are subject to discipline under
23 Code section 9889.3, subdivision (c), in that on or about September 13, 2013, regarding the 1998
24 Toyota vehicle, Respondent Trujillo failed to comply with provisions of California Code of
25 Regulations, title 16, as more particularly set forth above in paragraph 37.

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1 **THIRTEENTH CAUSE FOR DISCIPLINE**

2 **(Acts Involving Dishonesty, Fraud, or Deceit - Adjuster Licenses)**

3 44. Respondent Trujillo's brake and lamp adjuster licenses are subject to discipline under
4 Code section 9889.3, subdivision (d), in that on or September 13, 2013, regarding the 1998
5 Toyota vehicle, Respondent Trujillo committed acts involving dishonesty, fraud, or deceit, by
6 issuing Brake Certificate Number [REDACTED] and Lamp Certificate Number [REDACTED],
7 certifying that the brake and lamp systems were in satisfactory condition and in accordance with
8 the Vehicle Code, when, in fact, they were not.

9 **UNDERCOVER OPERATION NO. 2: 2001 HONDA**

10 45. On October 16, 2013, an undercover operator of the Bureau ("operator") took the
11 Bureau's 2001 Honda vehicle to Respondent H & R Smog's facility and requested a brake, lamp
12 and smog inspection. When the operator arrived at Respondent H & R Smog's facility, a male
13 employee completed a repair order. The operator was provided a copy of the signed document
14 without an odometer reading.

15 **FOURTEENTH CAUSE FOR DISCIPLINE**

16 **(Failure to Record Odometer Reading on a Work Order)**

17 46. Respondent H & R Smog's registration is subject to discipline under Code section
18 9884.7, subdivision (a)(2), in that on or about October 16, 2013, regarding the 2001 Honda
19 vehicle, Respondent H & R Smog failed to record odometer reading on a work order.

20 **UNDERCOVER OPERATION NO. 3: 2002 HONDA**

21 47. On December 12, 2013, an undercover operator of the Bureau ("operator") took the
22 Bureau's 2002 Honda vehicle to Respondent H & R Smog's facility and requested a smog, brake
23 and lamp inspections. The vehicle defects included a brake system with the right front brake rotor
24 and the right rear brake rotor deliberately machined to below the minimum manufacturer's discard
25 thickness specification. The headlamps were properly adjusted and all of the lights were
26 intentionally left functional.

27 48. When the operator arrived at Respondent H & R Smog's facility, he was greeted by a
28 male individual. The operator informed the male individual that he needed a smog, brake and

1 lamp inspections. Respondent Trujillo issued brake and lamp certificates. The operator paid
2 \$100.00 and was provided with a Smog Check Vehicle Inspection Report, Brake Certificate
3 Number [REDACTED] and Lamp Certificate Number [REDACTED] and a yellow and pink copy of
4 the unnumbered invoice.

5 49. At no time prior to the inspections was the operator given a price and did not sign
6 anything while at Respondent H & R Smog's facility. Additionally, the operator observed the
7 inspections which revealed that at no time was the vehicle ever driven pass/over the dynamometer
8 into any other areas within Respondent H & R Smog's facility, the vehicle was never lifted off the
9 ground, none of the vehicle's wheels were removed for any type of brake inspection. The vehicle
10 was never road tested and the vehicle's lights were never turned on at anytime for any type of
11 lamp inspection.

12 50. On December 17, 2013, a Bureau representative re-inspected the vehicle and found
13 that none of the wheels were removed from the vehicle, the right front brake rotor and the right
14 rear brake rotor were out of the manufacturer's specification.

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

16 **(Untrue and Misleading Statement)**

17 51. Respondent H & R Smog's registration is subject to discipline under Code section
18 9884.7, subdivision (a)(1) and California Code of Regulation, title 16, section 3371, in that on or
19 about December 12, 2013, regarding the 2002 Honda vehicle, Respondent H & R Smog made or
20 authorized statements which it knew or in the exercise of reasonable care should have known to
21 be untrue or misleading, as follows:

22 a. Respondent H & R Smog certified under penalty of perjury on Brake Certificate
23 Number [REDACTED] that the applicable inspection was performed on the brake system when, in
24 fact, Respondent H & R Smog's adjuster, Respondent Trujillo, failed to inspect the brake system
25 on the vehicle, as evidenced by his failure to remove the right front wheel and the right rear
26 wheel.

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1 b. Respondent H & R Smog certified under penalty of perjury on Brake Certificate
2 Number [REDACTED] that the right front brake rotor and the right rear brake rotor were within
3 manufacturer's specification.

4 c. Respondent H & R Smog certified under penalty of perjury on Lamp Certificate
5 Number [REDACTED] that the applicable adjustments had been performed on the lamp system
6 when, in fact, the vehicle's lights were never turned on at anytime for any type of lamp inspection.

7 **SIXTEENTH CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 52. Respondent H & R Smog's registration is subject to discipline pursuant to Code
10 section 9884.7, subdivision (a)(4), in that on or about December 12, 2013, regarding the 2002
11 Honda vehicle, Respondent H & R Smog committed acts that constitute fraud, as follows:

12 a. Respondent H & R Smog obtained payment from the operator for performing the
13 applicable inspections and adjustments on the vehicle's brake and lamp systems as specified by
14 the Bureau and in accordance with the Vehicle Code when, in fact, Respondent H & R Smog
15 failed to perform the necessary inspections.

16 **SEVENTEENTH CAUSE FOR DISCIPLINE**

17 **(Gross Negligence)**

18 53. Respondent H & R Smog's registration is subject to discipline under Code section
19 9884.7, subdivision (a)(5), in that on or about December 12, 2013, regarding the 2002 Honda
20 vehicle, Respondent H & R Smog committed acts constituting gross negligence, in that
21 Respondent's adjuster, Respondent Trujillo, failed to properly inspect the vehicle's brake system
22 and issued Brake Certificate [REDACTED], indicating that the vehicle's brake systems were in
23 satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

24 **EIGHTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with the Code)**

26 54. Respondent H & R Smog's registration is subject to discipline pursuant to Code
27 section 9884.7, subdivision (a)(6), in that on or about December 12, 2013, regarding the 2002
28

1 Honda vehicle, Respondent H & R Smog failed to comply with provisions of that Code in the
2 following material respects:

3 a. Section 9884.9, subdivision (a): Respondent H & R Smog failed to provide the
4 operator with a written estimated price for parts and labor for a specific job.

5 b. Section 9889.16:

6 i. Respondent Trujillo issued Brake Certificate Number [REDACTED] for the
7 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
8 the Vehicle Code, in that the right front brake rotor and the right rear brake rotor were out of
9 manufacturer's specifications.

10 ii. Respondent Trujillo issued Lamp Certificate Number [REDACTED] for the
11 vehicle, in that Respondent Trujillo failed to perform any lamp inspection of the vehicle, even
12 though the headlamps were within specifications.

13 **NINETEENTH CAUSE FOR DISCIPLINE**

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

15 55. Respondent H & R Smog's registration is subject to discipline pursuant to Code
16 section 9884.7, subdivision (a)(6), in that on or about December 12, 2013, regarding the 2002
17 Honda vehicle, Respondent H & R Smog failed to comply with provisions of California Code of
18 Regulations, title 16, in the following material respects:

19 a. Section 3305, subdivision (a): Respondent Trujillo failed to perform a brake and
20 lamp inspection in accordance with the vehicle's manufacturer standards and/or current standards,
21 specifications, recommended procedures, and/or directives issued by the Bureau.

22 b. Section 3316, subdivision (d)(2): Respondent Trujillo issued Lamp Certificate
23 Number [REDACTED], certifying that the vehicle's lamp system had been inspected and was in
24 satisfactory condition when, in fact, the vehicle's lights were never turned on at anytime for any
25 type of lamp inspection.

26 c. Section 3321, subdivision (c)(2): Respondent Trujillo issued Brake Certificate
27 Number [REDACTED], certifying that the vehicle's brake system had been inspected and was in
28 satisfactory condition when, in fact, it was not.

1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Code)**

3 56. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
4 under Code section 9889.3, subdivision (a), in that on or about December 12, 2013, regarding the
5 2002 Honda vehicle, Respondent H & R Smog violated sections of the Code, relating to its
6 licensed activities, as more particularly set forth above in paragraph 53.

7 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Bus. & Prof. Code)**

9 57. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
10 under Code section 9889.3, subdivisions (a) and (h), in that on or about December 12, 2013,
11 regarding the 2002 Honda vehicle, Respondent H & R Smog violated Code section 9889.16
12 relating to his licensed activities, as set forth in paragraph 54.

13 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

15 58. Respondent H & R Smog's brake and lamp station licenses are subject to discipline
16 pursuant to Code section 9889.3, subdivision (d), in that on or about December 12, 2013,
17 regarding the 2002 Honda vehicle, Respondent H & R Smog committed acts involving
18 dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in
19 paragraphs 47, 48, 49 and 50.

20 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with the Code)**

22 59. Respondent Trujillo's brake and lamp adjuster licenses are subject to discipline under
23 Code section 9889.3, subdivision (a), in that on or about December 12, 2013, regarding the 2002
24 Honda vehicle, Respondent Trujillo violated sections of the Code, relating to his licensed
25 activities, as more particularly set forth above in paragraph 54.

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1 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

2 **(Act Involving Dishonesty, Fraud, or Deceit - Adjuster License)**

3 60. Respondent Trujillo's brake adjuster license is subject to discipline under Code
4 section 9889.3, subdivision (d), in that on or about December 12, 2013, regarding the 2002 Honda
5 vehicle, Respondent Trujillo committed act involving dishonesty, fraud, or deceit, by issuing
6 Brake Certificate Number BC1769991 certifying that the brake system were in satisfactory
7 condition and in accordance with the Vehicle Code, when, in fact, it was not.

8 **OTHER MATTERS**

9 61. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke, or
10 place on probation the registrations for all places of business operated in this state by Hector
11 Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair, upon a finding
12 that it has, or is, engaged in a course of repeated and willful violation of the laws and regulations
13 pertaining to an automotive repair dealer.

14 62. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
15 Number RC 262578, issued to Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog
16 Check & Auto Repair, is revoked or suspended, any additional license issued under this chapter in
17 the name of said licensee may be likewise revoked or suspended by the director.

18 63. Pursuant to Code section 9889.9, if Lamp Station License Number LS 262578, issued
19 to Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair, is
20 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the
21 Business and Professions Code in the name of said licensees may be likewise revoked or
22 suspended by the director.

23 64. Pursuant to Code section 9889.9, if Brake Station License Number BS 262578, issued
24 to Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair, is
25 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the
26 Business and Professions Code in the name of said licensees may be likewise revoked or
27 suspended by the director.

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65. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector License No. EO 137433 and Smog Check Repair Technician License Number EI 137433 (formerly Advanced Emission Specialist Technician License Number EA 137433), issued to Hector E. Trujillo, are revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

66. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 137433, issued to Hector E Trujillo, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

67. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 137433, issued to Hector E Trujillo, is revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 262578, issued to Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair;

3. Revoking or suspending Smog Check Station License Number RC 262578, issued to Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair;

4. Revoking or suspending Lamp Station License Number LS 262578, issued to Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair;

5. Revoking or suspending Brake Station License Number BS 262578, issued to Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair;

6. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair;

7. Revoking or suspending Smog Check Inspector License Number EO 137433 (formerly Advanced Emission Specialist Technician License Number EA 137433), issued to Hector E Trujillo;

8. Revoking or suspending Smog Check Repair Technician License Number EI 137433 (formerly Advanced Emission Specialist Technician License Number EA 137433), issued to Hector E Trujillo;

9. Revoking or suspending Brake Adjuster License Number BA 137433, issued to Hector E Trujillo;

10. Revoking or suspending Lamp Adjuster License Number LA 137433, issued to Hector E. Trujillo;

11. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Hector E Trujillo;

12. Ordering Hector Everardo Trujillo aka Hector E Trujillo dba H & R Smog Check & Auto Repair; and Hector E Trujillo 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

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

DATED:

July 2, 2015



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

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