

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

In the Matter of the Accusation and Petition to Revoke Probation Against:

SIMRANDEEP S. BHULLAR dba STAR VALLEY SMOG

1506 N. Blackstone Avenue

Fresno CA 93703

Mailing address:

2830 E. Trenton Avenue

Fresno, CA 93720

Automotive Repair Dealer Registration No. ARD 280083

Smog Check Test Only Station License No. TC 280083

and

GURPREET SINGH CHAUHAN

1506 N. Blackstone Avenue

Fresno, CA 93703

Smog Check Inspector License No. EO 147842

Smog Check Repair Technician License No. EI 147842

Respondents.

Case No. 79/21-6008

OAH No. 2022020218

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 November 22, 2022.

IT IS SO ORDERED this 12 day of October, 2022.



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

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**SIMRANDEEP S. BHULLAR, DBA STAR VALLEY SMOG, and
GURPREET SINGH CHAUHAN, Respondents**

Agency Case No. 79/21-6008

OAH No. 2022020218

PROPOSED DECISION

Sean Gavin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 9, 2022, from Sacramento, California.

Brent O. Jex, Deputy Attorney General (DAG), represented Patrick Dorais (complainant), Chief, Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

William Ferreira, Attorney at Law, represented respondents Simrandeep Bhullar, doing business as (dba) Star Valley Smog and Gurpreet Singh Chauhan. Respondent Chauhan was present at the hearing, but respondent Bhullar was not.

Evidence was received, the record was closed, and the matter was submitted for decision on August 9, 2022.

FACTUAL FINDINGS

Respondents' License and Discipline History

1. On April 29, 2015, the Bureau issued respondent Bhullar Automotive Repair-Dealer (ARD) registration number 280083. On June 22, 2015, the Bureau issued respondent Bhullar smog check, test only station license number TC 280083. Star Valley Smog is also certified as a STAR Station.¹ The Bureau issued the certification on January 28, 2016, and it will remain active unless the ARD registration and/or station license are revoked or canceled, the licenses become delinquent, or the certification is invalidated. Both the ARD registration and station license were active at all times relevant to this matter.

2. In 2005, the Bureau issued respondent Chauhan advanced emission specialist technician license number EA 147842. In 2013, the license was renewed as smog check inspector license number EO 147842 and smog check repair technician license number EI 147842. Both licenses were active at all times relevant to this matter.

¹ "STAR" refers to a voluntary certification program that applies to a registered ARD that is also a licensed smog check test-and-repair station or a test-only station that meets all requirements specified in the Bureau's Gold Shield Program regulations, California Code of Regulations, title 16, section 3392.1, et seq. (Cal. Code Regs., tit. 16, § 3340.1.)

PREVIOUS LICENSE DISCIPLINE

3. In November 2018, complainant filed an accusation alleging fifteen causes to discipline respondents' registration and licenses for various violations of the Bureau's statutes and regulations in 2017 and 2018. Generally, the accusation alleged respondents failed to honor the price advertised on coupons on multiple occasions. The accusation also alleged respondent Chauhan failed to provide two Bureau undercover operators with a written estimate before performing a smog check inspection.

4. After a hearing before an ALJ with OAH, the Bureau issued a Decision and Order effective June 16, 2020, in which respondent Bhullar's ARD registration and station license and respondent Chauhan's smog check inspector and smog check repair technician licenses were revoked, the revocations stayed, and the registration and licensees placed on probation for two years, subject to terms and conditions. Among other things, the ALJ found that respondent Chauhan failed to provide a Bureau undercover operator with a written estimate before performing a smog check inspection on two vehicles.

Accusation and Petition to Revoke Probation

5. On December 6, 2021, complainant, in his official capacity, signed and thereafter filed the Accusation and Petition to Revoke Probation against respondents (Accusation). The Accusation alleged multiple causes to discipline respondents' registration and licenses due to multiple violations of the Automóive Repair Act and related regulations regarding work on a Bureau undercover vehicle. The Accusation further alleged cause to revoke respondents' probation for failure to obey all laws. Respondents filed a Notice of Defense and Notice of Intent to Assert Affirmative

and/or Special Defenses (Notice of Defense) and requested a hearing. This hearing followed.

Bureau's Evidence

UNDERCOVER VEHICLE

6. Between March 3 and 5, 2021, Jacob Okuma, a BAR Program Representative I, inspected a Bureau-owned 2000 Chevrolet Malibu (Malibu) and completed a California Emissions Inspection Test (smog check inspection) on it at the BAR's Sacramento Documentation Facility (Documentation Lab). The Malibu passed the smog check inspection, and Mr. Okuma printed a Vehicle Inspection Report (VIR) showing the same. Mr. Okuma also photographed the Malibu's engine and underhood Vehicle Emission Control Information (VECI) label, illustrating the required emissions components, including a positive crankcase ventilation (PCV) valve and vacuum hose. The PCV valve and vacuum hose are designed to redirect fuel vapors, preventing them from escaping into the atmosphere.

7. Mr. Okuma then prepared the Malibu for use as an undercover vehicle. He removed the Malibu's PCV valve and vacuum hose and photographed them. Next, he installed and photographed an orifice cap and vacuum plug in place of the PCV valve and vacuum hose. The orifice cap was painted to match the color of the surrounding engine components so it would blend in and not be noticeable. Mr. Okuma used such an orifice cap because otherwise, the different coloration could call attention to the cap and threaten the integrity of the undercover operation.

8. Mr. Okuma then completed another smog check inspection on the Malibu. This time, he failed the Malibu during the visual inspection because of the missing PCV valve and vacuum hose. He printed another VIR showing the same. The

vehicle required the installation or replacement of the missing PCV valve and vacuum hose before a smog check certificate of compliance could be issued. Following the smog check inspection, Mr. Okuma secured the Malibu at the Documentation Lab. Mr. Okuma signed a declaration detailing his contact with the Malibu. He testified consistent with his declaration.

ELEMENTS OF A SMOG CHECK INSPECTION

9. During a smog check inspection, the inspector must complete a visual and functional test of a vehicle. Inspectors must use all available information necessary to determine the vehicle's emission control requirements, including, but not limited to, the underhood VECI label, manufacturer service manuals, and third-party technical reference manuals. To pass inspection, the required emission control system must be complete and installed in accordance with the vehicle manufacturer's original California or federal certified configuration. If any emission control systems are found to be tampered with or defective, the vehicle shall fail the inspection. A system is tampered with when an emissions control system or component is missing, modified, or disconnected. A component is modified when it has been disabled, replaced with an aftermarket part, or changed such that there is no capacity for connection with or operation of other emissions control components.

10. Inspectors then enter the inspection results as prompted by the Emissions Inspection System (EIS) or On-Board Diagnostics Inspection System (OIS). Inspectors are prohibited from entering "Not Applicable" for an emission control system that is in fact required for the vehicle undergoing inspection. When inspecting the emissions control system, inspectors are not required to disassemble the vehicle to inspect components not readily accessible.

UNDERCOVER RUN

11. On May 13, 2021, Enrique Lopez, a BAR Program Representative II, retrieved the Malibu from the Documentation Lab. He reviewed Mr. Okuma's declaration regarding the preparation of the vehicle and inspected the Malibu, confirming the PCV valve and vacuum hose were still missing and the VECI label was still present. He then released the Malibu to John Galindo, a Bureau undercover operative. Mr. Galindo drove the Malibu to a prearranged location in Fresno, where he met with Mr. Lopez. Once there, Mr. Lopez again inspected the Malibu and verified the PCV valve and vacuum hose were still missing, and the VECI label was still present. Mr. Lopez photographed both. He then instructed Mr. Galindo to drive the Malibu to Star Valley Smog.

12. Mr. Galindo documented his involvement in the undercover run in a declaration. He has since passed away and did not testify at hearing. According to his declaration, on May 13, 2021, he drove the Malibu to Star Valley Smog and requested a smog check inspection. He met with respondent Chauhan, who provided him with an Emission Control Work Order (estimate). The estimate had no amount listed for the smog inspection or the total. Respondent Chauhan asked Mr. Galindo to fill out the customer information and sign the estimate, which he did. Prior to the inspection, Mr. Galindo did not receive a copy of the estimate or a price quote.

13. Respondent Chauhan then completed a smog check inspection on the Malibu and certified it passed the inspection. Star Valley Smog issued a passing certificate of compliance. Mr. Chauhan printed, signed, and presented to Mr. Galindo a VIR and an invoice for the services rendered. Mr. Galindo paid the requested amount and then drove the Malibu back to a prearranged location to meet Mr. Lopez, who again took photos of the Malibu's missing PCV valve and vacuum hose and underhood

VECI label. Before leaving Star Valley Smog, Mr. Galindo noticed that a copy of the estimate was on the driver's side seat of the Malibu. Finally, Mr. Galindo drove the Malibu back to the Documentation Lab and gave custody of it to Mr. Lopez, who took possession and re-secured it.

14. On May 13, 2021, Mr. Okuma again took possession of the Malibu. On May 14, 2021, Mr. Okuma performed another smog check inspection on the Malibu. Once again, Mr. Okuma failed the Malibu during the visual inspection, because of the missing PCV valve and vacuum hose. Mr. Okuma printed another VIR showing the same. Mr. Okuma again photographed the Malibu, showing that the PCV valve and vacuum hose were still missing and the VECI label was still in place.

Respondents' Evidence

15. Respondent Chauhan has worked as a smog check technician since 2005. Apart from the prior discipline alleged in this matter, he had one prior citation from the Bureau in approximately 2006 or 2007. He enjoys his career as a smog technician and does not know what he would do for work if he lost his license.

16. Respondent Chauhan recalls working on the Malibu. He followed his usual approach, which includes looking at the VECI label and performing a visual inspection. When he does a visual inspection, in addition to evaluating the components included on the VECI label, respondent Chauhan also checks to make sure there is "nothing fresh" under the hood, because anything that looks newer than the rest of the engine would indicate recent modifications. He noted he is not required to disassemble the engine to find emissions components not immediately visible.

17. Respondent Chauhan did not know the PCV valve or vacuum hose on the Malibu were missing. He thought they were present but not visible. He has no

incentive to pass a non-conforming vehicle and would not have passed the Malibu if he realized it was missing components. He noticed the orifice cap, but because it looked similarly aged to the rest of the vehicle's parts, he concluded it was part of the original manufacturer's equipment and supposed to be there. Additionally, the Malibu "ran smoothly," which he knew would not be the case if there was a problem with the PCV system. Based thereon, he passed the Malibu's visual inspection.

18. Respondent Chauhan also recalls giving Mr. Galindo a copy of the estimate right after Mr. Galindo signed it and before performing the smog check inspection. He knows he did so because that has been his standard practice since he has been on Bureau probation.

19. Respondent Chauhan regrets his mistake in passing the Malibu. He believes additional training would help him avoid similar mistakes. He has not undergone any such training on his own initiative. Now, he treats every vehicle like it is a Bureau undercover vehicle and he "doesn't do anyone any favors," such as overlooking a cracked hose. He believes he is presently performing smog checks appropriately, and he checks all parts during the visual inspections, even if they look old.

20. At some time after the undercover run in May 2021, Star Valley Smog instituted a new smog inspection audit policy and procedures. The new policy was provided to each smog technician and posted at the shop. It includes eight directives designed to ensure the technicians handle all smog checks appropriately.

21. Respondent Chauhan relies on his smog technician licenses to make a living for himself and his family. His wife does not work and he is the sole financial provider for himself, his wife, and his two minor children. He has approximately \$200

of disposable income every month and would need to reimburse the Bureau pursuant to a payment plan, if at all.

Analysis

22. The Accusation alleged seven causes to discipline respondent Bhullar's ARD registration or station license and three causes to discipline one or both of respondent Chauhan's licenses. It also alleges cause to revoke both respondents' probation for failure to obey all laws.

UNTRUE OR MISLEADING STATEMENTS – FIRST CAUSE FOR DISCIPLINE

23. Complainant alleged respondent Bhullar's ARD registration is subject to discipline for making or authorizing statements he knew or should have known were untrue or misleading when he certified that the Malibu passed a smog inspection when it had a missing PCV valve and vacuum hose. Mr. Okuma credibly explained that the installation or replacement of the missing PCV valve and vacuum hose was required before a smog check certificate of compliance could be issued. Respondent Chauhan did not dispute that opinion, but rather argued at hearing his error was in good faith.

24. Respondent Chauhan acknowledged he saw the Malibu's VECI label. He also acknowledged he had access to third-party reference manuals that identified the Malibu as having a PCV system. Consequently, the evidence established that respondent Chauhan knew or should have known that the PCV valve and vacuum hose were missing. Respondent Bhullar's issuance of the certificate of compliance, stating that the Malibu passed the visual portion of the smog check inspection, therefore represents an untrue or misleading statement.

FRAUD – SECOND CAUSE FOR DISCIPLINE

25. Complainant alleged respondent Bhullar's ARD registration is subject to discipline for committing fraud by issuing a certificate of compliance to the Malibu without ensuring that it passed a bona fide inspection of the emission control devices and systems. Pursuant to section 9884.7, subdivision (e)(2), fraud includes, among other things, "A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact."

26. Respondent Bhullar issued the certificate of compliance as a result of respondent Chauhan failing to identify the missing PCV valve and vacuum hose. As Mr. Okuma credibly explained, that statement was a misrepresentation of a material fact. However, complainant did not provide evidence that either respondent Chauhan's error, or the resulting certificate of compliance based on the error, were intentionally false or the result of gross negligence as opposed to a good faith mistake. Fraud "is never presumed; it must be established by proof." (*Dorn v. Lichenin* (1951) 105 Cal.App.2d 796, 801.) Without such proof, there is no basis to sustain the charges of fraud in the Accusation.

FAILURE TO PROVIDE A WRITTEN ESTIMATE OR SIGNED COPY – THIRD AND FOURTH CAUSES FOR DISCIPLINE

27. Complainant alleged respondent Bhullar's ARD registration is subject to discipline for failing to provide the undercover operator with a copy of the written estimate for work prior to performing such work, in violation of section 9884.9, subdivision (a), and for failing to ensure his employees provided the undercover operator with a copy of the work order estimate as soon as the operator signed it, in violation of section 9884.7, subdivision (a)(3). Those sections require the ARD to

provide the customer a written estimate and forbid the ARD from performing any work before the customer authorizes such work. When the customer authorizes work in writing, as Mr. Galindo did here, the ARD "shall capture his or her signature and record the date of signature on the estimate or on documents that supplement the estimate." (Cal. Code Regs., tit. 16, § 3353.1, subd. (b).)

28. Here, the evidence established that respondent Bhullar, through respondent Chauhan, provided the undercover operator with a copy of the written estimate after performing the work. Mr. Galindo explained in his declaration that he signed the estimate before there was any total amount listed, but he did not receive a copy of the estimate before the smog check inspection. Rather, a copy was placed on the seat of the Malibu afterwards.

29. Respondents did not present any evidence to challenge Mr. Galindo's credibility. Instead, Mr. Chauhan testified that he always provides a copy of estimates to customers after they sign them. Mr. Chauhan's testimony was biased by his own self-interest. (Evid. Code, § 780, subd. (f).) Furthermore, such a practice is inconsistent with the ALJ's findings in respondents' previous license discipline case. When all the evidence is considered, Mr. Galindo's version of events was more persuasive.

FAILURE TO COMPLY WITH MOTOR VEHICLE INSPECTION PROGRAM – FIFTH, SIXTH, EIGHTH, AND NINTH CAUSES FOR DISCIPLINE

30. Complainant alleged respondent Bhullar's station license and respondent Chauhan's smog check inspector licenses are subject to discipline for failing to ensure the emission control tests were properly performed on the Malibu, and for issuing a certificate of compliance for the Malibu without ensuring it was properly tested, in violation of statutes and regulations governing licensees.

31. As a licensed smog check inspector, respondent Chauhan is responsible for ensuring he performs all required components of a smog check inspection, including a visual inspection. As the owner of a licensed smog check station, respondent Bhullar is responsible for ensuring his inspectors perform smog check inspections in accordance with the law. The undisputed evidence established that Mr. Okuma introduced a defect into the Malibu's emission control system when he removed the PCV valve and vacuum hose, requiring the vehicle to fail the visual portion of a proper smog check inspection. However, on May 13, 2021, respondent Bhullar's smog check inspector, respondent Chauhan, performed a smog check inspection on the Malibu and passed it. Respondent Bhullar then issued a certificate of compliance to the Malibu, thereby certifying it had passed a proper smog check inspection. As such, complainant established a basis to discipline both respondent Bhullar's station license and respondent Chauhan's smog check inspector license for failure to comply with the Motor Vehicle Inspection Program.

DISHONESTY, FRAUD, OR DECEIT – SEVENTH AND TENTH CAUSES FOR DISCIPLINE

32. Complainant alleged respondent Bhullar's station license and respondent Chauhan's smog check inspector licenses are subject to discipline for issuing a certificate of compliance for the Malibu without ensuring that it passed a bona fide inspection of the emission control devices and systems, in violation of Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c).

33. The evidence showed that, despite the Malibu missing its PCV valve and vacuum hose, respondent Chauhan performed a smog check inspection on the Malibu and passed it, and respondent Bhullar then issued a certificate of compliance to the Malibu, thereby certifying it had passed a proper smog check inspection. However,

complainant did not provide evidence that either respondents' actions were the result of dishonesty, fraud, or deceit, as opposed to a good faith error.

34. Furthermore, section 44072.10, subdivision (c), provides that the Bureau "shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles." It goes on to list examples of what constitutes a fraudulent inspection, including clean piping², tampering with a vehicle, and intentionally or willfully violating the relevant statutes or regulations. Such actions are among the most severe a licensee can take, and complainant did not prove that either respondent's actions in this case rose to the level of a fraudulent inspection. Rather, respondent Chauhan credibly testified that he did not notice the missing PCV valve or vacuum hose, in part because the orifice cap was painted to blend in with the surround engine parts.

FAILURE TO OBEY ALL LAWS – CAUSE TO REVOKE PROBATION

35. Complainant alleged respondents' registration and license probation are subject to revocation for violating Condition 1 of probation, which required respondents to "comply with all federal and state statutes, regulations and rules governing all [Bureau] registrations and licenses held by [r]espondent[s]." As discussed in the Factual Findings above and Legal Conclusions below, the evidence proved that respondents violated sections of the Automotive Repair Act regarding the Malibu.

² "Clean piping' . . . means the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to cause the [Emissions Inspection System] to issue a certificate of compliance for the test vehicle." (Cal. Code Regs., tit. 16, § 3340.1.)

APPROPRIATE DISCIPLINE

36. The Bureau maintains Guidelines for Disciplinary Orders and Terms of Probation (Guidelines). (Regulations, § 3395.4.) It is only appropriate to deviate from the Guidelines when the Bureau in its sole discretion determines that the facts of the particular case warrant such deviation. (*Ibid.*) The Guidelines include recommended discipline for violating specific laws and regulations governing licensees. The recommended discipline for violating Health and Safety Code section 44072.10, subdivision (c), is revocation. The recommended discipline for violating all other laws and regulations alleged in the Accusation is revocation, stayed, with a term of probation ranging from two to five years.

37. The Guidelines also include aggravating and mitigating factors to consider when determining the appropriate level of license discipline in a particular case. The aggravating factors relevant to this matter include respondents' prior license discipline and ongoing probationary status, which suggest these violations are part of a pattern of practice. The mitigating factors relevant to this matter include respondents' measures to correct their business practices to minimize the likelihood of recurrence of the violations. Specifically, respondent Bhullar has instituted a new smog inspection audit policy and procedures. Additionally, respondent Chauhan now treats every vehicle as if it is a Bureau undercover vehicle and takes extra care to ensure he thoroughly and accurately completes all components of a smog check inspection, including the visual inspection.

38. In this case, cause exists to discipline respondents' registration and licenses for making an untrue or misleading statement and for failing to timely provide a customer a signed copy of the estimate. Respondents were already on probation for, among other things, making untrue or misleading statements and for failing to timely

provide customers signed copies of the work estimates. In light of that disciplinary history, respondents' current violations are concerning because they demonstrate a pattern of practice of failing to comply with the Bureau's laws and regulations:

39. "The object of an administrative proceeding aimed at revoking a license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome." (*Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 184.) The Bureau placed respondents on probation and brought this action not to punish them, but to ensure public protection. When all the evidence and the Bureau's Guidelines are considered, although cause exists to discipline respondents' registration and licenses, revoking them would be unduly punitive. Instead, instituting the Bureau's recommended discipline of a stayed revocation with a new probation term of five years is the appropriate license discipline to serve the goal of public protection.

Affirmative Defenses

40. In their Notice of Defense, respondents raised the following affirmative and special defenses: agency misconduct, entrapment, and destruction of subject matter. Specifically, they alleged the Bureau "failed to exercise due care in the preservation of evidence during their inspection process; in some cases, repairing the alleged defects, thereby preventing [r]espondent[s] from a subsequent inspection to rebut the allegations contained herein." They further alleged the Bureau "failed to exercise due care in the preparation of the vehicles [s/c] prior to the undercover operation" and "used techniques specifically designed to confuse and mislead automotive repair facilities," such as making "repeated attempts to induce the technicians to pass an [s/c] non-conforming vehicle by bringing in the vehicle several times to [r]espondents [s/c] facility to secure passing certificates for the undercover

vehicle." Finally, they argued the Bureau "failed to exercise due care in the preservation of evidence during their undercover operation" because it "should have requested the old parts to confirm the facility's diagnosis" and "permitted [respondents'] representative to be present to view disassembly and document any alleged deficiencies."

41. At hearing, respondent did not present evidence to prove their affirmative defenses. Specifically, the evidence did not establish that the Bureau "repaired the alleged defects" after respondents worked on it. Respondents presented no evidence to suggest the Bureau's use of an undercover vehicle with an introduced malfunction was designed to confuse or mislead respondent. Mr. Okuma credibly testified that he used an orifice cap painted to match the surround engine parts to preserve the integrity of the operation. Additionally, even if the orifice cap confused respondent Chauhan, the vacuum hose was also missing. Finally, respondents did not specify what "old parts" should have been requested to "confirm the facility's diagnosis." Consequently, as explained in Legal Conclusions 17 through 19, below, respondent's affirmative defenses have been considered and are rejected.

Costs

42. The Bureau submitted a certified copy of the actual costs of investigation of this matter. The Bureau incurred a total of \$2,144.88 in investigative costs for 24 hours spent reviewing documents and evidence, conducting surveillance, and writing reports. The attorney general's office certified its prosecution costs of \$7,818.75 for 36 hours of legal services, including case evaluation and preparation, document analysis, trial and witness preparation, and paralegal work. The total amount of costs of investigation and prosecution of this matter is \$9,963.63.

43. Respondents argued that the attorney general's office billed for duplicative time after changing counsel. Respondents further argued that their financial circumstances would not enable them to make a lump sum payment of any cost award and would require a payment plan. The reasonableness of the costs is more fully discussed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. To prevail in a disciplinary proceeding, complainant must prove the claims in the Accusation by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916; Evid. Code, § 115.) Respondent has the burden to prove rehabilitation, which is akin to an affirmative defense. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App.156, 164.) A preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

Applicable Law and Causes for Discipline

UNTRUE OR MISLEADING STATEMENTS – FIRST CAUSE FOR DISCIPLINE

2. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members make or authorize "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." (§ 9884.7, subd. (a)(1).) As discussed in Factual Findings 23 and 24, respondent Bhullar issued a certificate of compliance for the Malibu despite the missing PCV valve and vacuum hose, which constituted a

statement that was untrue and misleading. Cause therefore exists to discipline respondent Bhullar's ARD registration pursuant to section 9884.7, subdivision (a)(1).

FRAUD – SECOND CAUSE FOR DISCIPLINE

3. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members engage in "conduct that constitutes fraud." (§ 9884.7, subd. (a)(4).) Pursuant to section 9884.7, subdivision (e), "fraud" includes, among other things:

(1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.

(2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.

(3) A promise or representation not made honestly and in good faith.

(4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

4. Complainant alleged respondent Bhullar committed fraud by issuing a certificate of compliance to the Malibu without ensuring that it passed a bona fide inspection of the emission control devices and systems. As discussed in Factual Finding 25 and 26, the evidence did not establish that either respondent Chauhan's error, or

the resulting certificate of compliance based on the error, were the result of fraud as opposed to a good faith mistake. Cause therefore does not exist to discipline respondent's ARD registration pursuant to section 9884.7, subd. (a)(4).

FAILURE TO PROVIDE A WRITTEN ESTIMATE OR SIGNED COPY – THIRD AND FOURTH CAUSES FOR DISCIPLINE

5. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members, "Fail[s] in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it." (§ 9884.7, subd. (a)(6).) Section 9884.9, subdivision (a), provides, in relevant part, "The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job, except as provided in subdivision (e). No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer." When the customer authorizes work in writing, the ARD "shall capture his or her signature and record the date of signature on the estimate or on documents that supplement the estimate." (Cal. Code Regs., tit. 16, § 3353.1, subd. (b).) As discussed in Factual Findings 27 through 29, respondent Bhullar, through respondent Chauhan, provided the undercover operator with a copy of the written estimate after performing the work, when a copy was placed on the seat of the Malibu. Cause therefore exists to discipline respondent's ARD registration pursuant to section 9884.7, subdivision (a)(6), as that section interacts with section 9884.9, subdivision (a).

6. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members, "Fail[s] or refus[es] to give to a customer a copy of any document requiring the customer's signature as soon as the customer signs the document." (§ 9884.7, subd. (a)(6).) As discussed in

Factual Findings 27 through 29, respondent Bhullar, through respondent Chauhan, provided the undercover operator with a copy of the written estimate after performing the work, when a copy was placed on the seat of the Malibu. Cause therefore exists to discipline respondent's ARD registration pursuant to section 9884.7, subdivision (a)(3).

FAILURE TO COMPLY WITH MOTOR VEHICLE INSPECTION PROGRAM – FIFTH, SIXTH, EIGHTH, AND NINTH CAUSES FOR DISCIPLINE

7. The Bureau may discipline a smog station license or smog check inspector license if the licensee "violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities." (Health & Saf. Code, § 44072.2, subd. (a).) Pursuant to Health and Safety Code section 44015, a vehicle may only be issued a certificate of compliance if it meets the requirements of Health and Safety Code section 44012, which provides, at subsection (f), that all smog check inspections include a visual test of the vehicle's emission control system. As discussed in Factual Findings 30 and 31, the Malibu was missing the PCV valve and vacuum hose during the inspection, requiring the vehicle to fail the visual portion of a proper smog check inspection. Cause therefore exists to discipline respondent Bhullar's smog station license pursuant to Health and Safety Code section 44072.2, subdivision (a), as that section interacts with Health and Safety Code sections 44012 and 44015.

8. As discussed in Factual Findings 30 and 31, the Malibu was missing the PCV valve and vacuum hose during the inspection, requiring the vehicle to fail the visual portion of a proper smog check inspection. Cause therefore exists to discipline respondent Chauhan's smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (a), as that section interacts with Health and Safety Code sections 44012 and 44015.

9. The Bureau may discipline a smog station license or smog check inspector license if the licensee "violates any of the regulations adopted by the director pursuant to this chapter." (Health & Saf. Code, § 44072.2, subd. (c).) All vehicles undergoing a smog check inspection must be subject to "a visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed." (Cal. Code Regs., tit. 16, § 3340.42, subd. (b)(1).) A smog check station may only issue a certificate of compliance if the vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly." (Cal. Code Regs, tit. 16, § 3340.35, subd. (c).) As discussed in Factual Findings 6 through 14, the Malibu was missing the PCV valve and vacuum hose when respondent Bhullar issued the certificate of compliance, requiring the vehicle to fail the visual portion of a proper smog check inspection. Cause therefore exists to discipline respondent Bhullar's smog station license pursuant to Health and Safety Code section 44072.2, subdivision (c), as that section interacts with California Code of Regulations, title 16, sections 3340.42 and 3340.35, subdivision (c).

10. Smog check inspectors must "inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article." (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).) As discussed in Factual Findings 6 through 14, the Malibu was missing the PCV valve and vacuum hose during this inspection, requiring the vehicle to fail the visual portion of a proper smog check inspection. Cause therefore exists to discipline respondent Chauhan's smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (c), as that section interacts with California Code of Regulations, title 16, sections 3340.42 and 3340.30, subdivision (a).

**DISHONESTY, FRAUD, OR DECEIT – SEVENTH AND TENTH CAUSES FOR
DISCIPLINE**

11. The Bureau may discipline a smog station license or smog check inspector license if the licensee "commits any act involving dishonesty, fraud, or deceit whereby another is injured." (Health & Saf. Code, § 44072.2, subd. (d).) Complainant alleged respondents committed dishonesty, fraud, or deceit by issuing a certificate of compliance to the Malibu without ensuring that it passed a bona fide inspection of the emission control devices and systems. As discussed in Factual Finding 32 through 34, the evidence did not establish that either respondent Chauhan's error, or respondent Bhullar's subsequent issuance of certificate of compliance based on the error, were the result of dishonesty, fraud, or deceit as opposed to a good faith mistake. Cause therefore does not exist to discipline either respondent Bhullar's smog station license or respondent Chauhan's smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (d).

12. 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 the following:

- (1) Clean piping, 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.

(Health & Saf. Code, § 44072.10, subd. (c).)

13. As discussed in Factual Finding 32 through 34, complainant did not establish that either respondent's actions in this case rose to the level of a fraudulent inspection. Cause therefore does not exist to discipline either respondent Bhullar's smog station license or respondent Chauhan's smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (d).

Cause to Revoke Probation – Failure to Obey all Laws

14. Pursuant to Condition 7 of respondents' probation:

If [r]espondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once [r]espondent is served notice of [the Bureau's] intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

15. Condition 1 of respondents' probation required respondents to "comply with all federal and state statutes, regulations and rules governing all [Bureau] registrations and licenses held by [r]espondent." As discussed in the Factual Findings above and Legal Conclusions below, complainant established that, while on probation,

respondents violated sections of the Bureau's statutes and regulations governing licensees regarding the Malibu. Cause therefore exists to revoke respondents' probation pursuant to Condition 7 for violating Condition 1.

Appropriate Discipline

16. As discussed in Factual Findings 36 through 39, cause exists to discipline respondents' registration and licenses. However, when considering the evidence as a whole and the Bureau's Guidelines, the appropriate discipline is a stayed revocation with a new probation term of five years under the same terms and conditions.

Affirmative Defenses

AGENCY MISCONDUCT

17. As discussed in Factual Findings 40 and 41, respondent did not present evidence that established the Bureau engaged in misconduct by failing to exercise due care in the preservation of evidence during the inspection process or by repairing the alleged defects after receiving the Malibu back from respondents. This affirmative defense is therefore denied.

ENTRAPMENT

18. As discussed in Factual Findings 40 and 41, respondents did not present evidence that established the Bureau entrapped them by failing to exercise due care in the preparation of the Malibu prior to the undercover operation or using techniques specifically designed to confuse and mislead automotive repair facilities. This affirmative defense is therefore denied.

DESTRUCTION OF SUBJECT MATTER

19. As discussed in Factual Findings 40 and 41, respondents did not present evidence that established the Bureau destroyed subject matter by failing to request any old or replaced parts from respondents to confirm respondents' diagnosis or by failing to permit respondents' representative to be present to view and document the Malibu's subsequent reinspection. This affirmative defense is therefore denied.

Costs

20. Section 125.3 provides that a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought under statutory provisions such as Business and Professions Code section 125.3. Those factors include whether the licensee was successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

21. As discussed in Factual Findings 42 and 43, complainant seeks \$9,963.63 in investigation and enforcement costs. When applying the *Zuckerman* factors, that amount is excessive. Assessing the full costs to respondents would unfairly penalize them for using the hearing process to defend themselves and seek a reduction of the discipline sought. Furthermore, respondents not only maintained a subjective good faith belief in the merits of their position, but were successful in defending three of the

10 causes for discipline. In addition, as respondents noted, it is a reasonable conclusion that the attorney general's costs in this matter included billing attributable to a change of responsible attorney. It would be unfair to impose those duplicative amounts on respondents. Finally, respondent Chauhan has limited financial means. Under these circumstances, reducing the Bureau's costs to \$7,500 and permitting respondents to pay those costs pursuant to a monthly payment plan is appropriate.

Other Matters

22. Pursuant to section 9884.7, subdivision (c), the Bureau may discipline the registration for all places of business operated in California by an ARD upon a finding that the ARD has, or is, engaged in a course of repeated and willful violations of the Automotive Repair Act or the Bureau's Regulations. Although the evidence established a violation of the Automotive Repair Act, the evidence did not establish that this violation was part of a course of repeated and willful violations. Cause for discipline has therefore not been established pursuant to section 9884.7, subdivision (c).

23. Health and Safety Code section 44072.8 provides that when a license has been revoked or suspended under the Motor Vehicle Inspection Program, it constitutes cause to suspend or revoke any additional license issued under the Motor Vehicle Inspection Program. There was no evidence that any other license was issued to respondent Bhullar under the Motor Vehicle Inspection Program. However, respondent Chauhan hold both a smog check inspector license and a smog check repair technician license. Only one cause for discipline, the tenth, targeted his smog check repair technician license, but that cause for discipline was not supported by the evidence and is dismissed. Nevertheless, pursuant to Health and Safety Code section 44072.8, because respondent Chauhan's smog check inspector license is subject to discipline, his smog check repair technician license is also subject to discipline.

ORDER

The Accusation and Petition to Revoke Probation against respondents Simrandeep S. Bhullar, doing business as Star Valley Smog, and Gurpreet Singh Chauhan, is SUSTAINED in part and DENIED in part. ARD registration No. ARD 280083 is invalidated, and smog check, test only station license number TC 280083, smog check inspector license number EO 147842, and smog check repair technician license number EI 147842, are REVOKED. However, the ARD registration invalidation and license revocations are stayed, and are placed on probation for five years, subject to the following terms and conditions:

1. Obey All Laws. During the period of probation, respondents shall comply with all federal and state statutes, regulations and rules governing all Bureau registrations and licenses held by respondent.
2. Quarterly Reporting. During the period of probation, respondents shall report either by personal appearance or in writing as determined by the Bureau on a schedule set by the Bureau, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
3. Report Financial Interests. Respondents shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation, report any financial interest which any respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records. Respondents shall provide the Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondents shall also provide Bureau representatives unrestricted access to all records pursuant to the Bureau's laws and regulations.

5. Tolling of Probation. If, during probation, respondents leave the jurisdiction of California to reside or do business elsewhere or otherwise cease to do business in the jurisdiction of California, respondents shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost, reimbursement requirements, restitution requirements, training requirements, and that respondents obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondents are not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondents are not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. Violation of Probation. If respondents violate or fail to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondents are served notice of the Bureau's

intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. Maintain Valid License. Respondents shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau, including any period during which suspension or probation is tolled. If respondents' registration or licenses are expired at the time the decision becomes effective, the registration or licenses must be renewed by respondents within 30 days of that date. If respondents' registration or licenses expire during a term of probation, by operation of law or otherwise, then upon renewal, respondents' registration or licenses shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.


8. Cost Recovery. Respondents shall pay the Bureau \$7,500 for the reasonable costs of the investigation and enforcement of case number 79/21-6008. Respondents shall be permitted to make monthly payments as agreed by the Bureau, so long as the full amount is paid no later than six months prior to the termination of probation. Respondents shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case number 79/21-6008. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The Bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of Probation. Upon successful completion of probation, respondents' affected registration and/or licenses will be fully restored or issued

without restriction, if respondents meet all current requirements for registration or licensure and have paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

10. License Surrender. Following the effective date of a decision that orders a stay of invalidation or revocation, if respondents cease business operations or are otherwise unable to satisfy the terms and conditions of probation, respondents may request that the stay be vacated. Such request shall be made in writing to the Bureau. The Director and the Bureau Chief reserve the right to evaluate respondents' request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision. Respondents may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of the Bureau at any time before the date of the originally scheduled completion of probation. If respondents apply to the Bureau for a registration or license at any time after that date, respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to the Bureau and left outstanding at the time of surrender.

DATE: September 8, 2022


Sean Gavin (Sep 8, 2022 08:18 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings