

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

In the Matter of the Accusation Against:

JAY DANGOURIAN, OWNER dba JAYS AUTOMOTIVE

305 N. Broadway

Santa Maria, CA 93454

Automotive Repair Dealer Registration No. ARD 193266

Smog Check Station License No. RC 193266

and

MARTIN TOVAR CASTILLO

132 Pelican Lane

Guadalupe, CA 93434

Smog Check Inspector License No. EO 146703

Smog Check Repair Technician License No. EI 146703

OTHER RELATED LICENSES

JAY DANGOURIAN

1420 Solomon Rd.

Santa Maria, CA 93455

Smog Check Inspector License No. EO 15023

Respondents.

Case No. 79/18-2754

OAH No. 2019030892

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 April 8, 2020.

IT IS SO ORDERED this 21 day of February, 2020.



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

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

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Doing Business As JAYS AUTOMOTIVE

Automotive Repair Dealer Registration No. ARD 193266

Smog Check Station License No. RC 193266

and

MARTIN TOVAR CASTILLO

Smog Check Inspector License No. EO 146703

Smog Check Repair Technician License No. EI 146703

Respondents

Agency Case No. 79/18-2754

OAH No. 2019030892

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on December 9, 2019.

Stephanie J. Lee, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department). William D. Ferreira, Attorney at Law, represented respondent Jay Dangourian, who owns and does business as Jays Automotive. Dangourian was present at the hearing. Prior to the commencement of the hearing, respondent Martin Tovar Castillo's request for a hearing was withdrawn given that he entered into a *Stipulated Revocation of License and Order*. Castillo did not appear at the hearing.

In the Accusation, the Bureau seeks to discipline the respondents' registration and licenses based on allegations respondents violated the Automotive Repair Act by engaging in, among other things, conduct constituting dishonesty, fraud, and deceit in contravention of the California Motor Vehicle Inspection Program by issuing Certificates of Compliance to at least five vehicles, none of which was subjected to a bona fide emission inspection.

Testimony and documentary evidence was received. The case was argued. The record was closed and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal

Conclusions, and Order staying revocation of the registration and station license issued to Dangourian as owner doing business as Jays Automotive.¹

FACTUAL FINDINGS

1. Complainant made the Accusation in an official capacity.

Respondent's Background and License History

2. In 1978 or 1979, the adolescent Dangourian started working in the automotive industry assisting his father at an auto repair facility. Since 1997, Dangourian has been operating Jays Automotive.

3. In 1997, the Bureau issued Automotive Repair Dealer Registration number ARD 193266 to Jay Dangourian, owner, doing business as Jays Automotive. The registration, which was in full force and effect at all times relevant to the

¹ Castillo's conduct provides the predicate for disciplinary action against Dangourian's registration and station license. (See Factual Findings 19 through 23.) However, in light of the *Stipulated Revocation of License and Order* (see OAH Exhibit 1), there are no Factual Findings or Legal Conclusions regarding Castillo's conduct alleged in the Seventh Cause for Discipline (Violations of Motor Vehicle Inspection Program), the Eighth Cause for Discipline (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program), and the Ninth Cause for Discipline (Dishonesty, Fraud or Deceit) of the Accusation.

allegations in the Accusation in the above-captioned matter, expires on February 29, 2020, unless renewed.

4. On April 18, 1997, the Bureau issued Smog Check Station License number RC 193266 to Jay Dangourian, owner, doing business as Jay's Automotive. The station license, which was in full force and effect at all times relevant to the allegations in the Accusation in the above-captioned matter, expires on February 29, 2020, unless renewed.

5. In 1997, the Bureau issued Basic Area (EB) Technician License number 1503 to Jay Dangourian pursuant to SB 1997, the biennial Smog Check Program implemented on January 1, 1990. The EB license was due to expire on July 31, 2013; however, the EB license was cancelled on April 26, 2013, and then renewed, pursuant to Dangourian's election, as Smog Check Inspector License number EO 15023 and Smog Check Repair Technician License number EI 15023 effective April 26, 2013. The inspector and technician licenses, which were in full force and effect at all times relevant to the allegations in the Accusation in the above-captioned matter, expire on July 31, 2021, unless renewed.

6. For the prior 16 years leading up to his last day of work on August 30, 2019, Jays Automotive employed Castillo as its primary technician. In 2003, the Bureau issued Advanced Emission Specialist Technician License number EA 146703 to Martin Tovar Castillo pursuant to SB 1997, the biennial Smog Check Program implemented January 1, 1990. The technician license expired on January 31, 2013, and it was cancelled on February 6, 2013. Under California Code of Regulations, title 16, section 3340.28, subdivision (e), the Bureau renewed the emission specialist license as Smog Check Inspector License number EO 146703, effective February 6, 2013, and Smog Check Repair Technician License number EI 146703, effective February 12, 2013,

pursuant to Castillo's election. The inspector license, which was in full force and effect at all times relevant to the allegations in the Accusation in the above-captioned matter, expires on January 31, 2021. Castillo's technician license expired on January 31, 2015.

7. Dangourian's registration and station license have a history of one prior citation stemming from Castillo's conduct while working at Jays Automotive. On June 13, 2014, the Bureau issued Citation number C2014-0956 to Dangourian, doing business as Jays Automotive, for causing the issuance of Certificate of Compliance number PG818662C to a Bureau undercover vehicle with ignition timing adjusted beyond specifications and imposed a \$1,000 penalty, which has been paid. The Bureau also issued corresponding Citation M2014-0957 with an Order of Abatement to Castillo who in actuality conducted the inspection of the Bureau undercover vehicle. Castillo was directed to complete an eight-hour Bureau-certified training course, which he did.

California Smog Inspection Program

8. California's smog check program is designed to improve air quality and to protect the public health by reducing air pollution produced through vehicle emissions. The smog check program requires owners to submit their vehicles to smog inspections and obtain certificates of compliance. Licensed smog check inspectors at licensed smog check stations conduct these mandated smog check inspections and are the only persons authorized by the Bureau to perform official inspections. Smog check inspectors are issued a license and a personal access code which they must personally enter to initiate and perform the smog check inspections.

9. The Bureau is responsible for the licensure and regulation of smog check stations and smog check inspectors. The Bureau plays a key role in maintaining air quality by verifying that licensees properly inspect motor vehicles. The purpose of a proper smog inspection is to determine that all required emission control devices and systems are installed and functioning properly and to detect and reduce tampering and emission control failures.

10. A smog inspection consists of a three-part test. For vehicles built in 1999 and earlier, the smog inspection is performed using an Emission Inspection System (EIS), also known as a BAR 97. The first part of the inspection is an emission sample test to analyze tail pipe emissions obtained while the vehicle's engine is running. The smog inspector then conducts a visual inspection to verify the presence of required emission control systems and components. Finally, the smog inspector performs a functional test to physically test certain emission system components, such as the malfunction indicator light (MIL) or pressure test of the gas cap.

11. On most 1996 to 1999 model-year vehicles, an On-Board Diagnostics (OBDII) functional test is also performed. The inspector is required to connect a test cable from the EIS to a Diagnostic Link Connector (DLC), which is a plug located in the vehicle's passenger compartment. Through the DLC the EIS retrieves information from the vehicle's on-board computer. When that information is retrieved, it is relayed to a database maintained by the Bureau, the Vehicle Information Database (VID).

12. In March 2015, the smog inspection process was updated for most vehicles constructed after 1999. The updated inspection process requires the use of an On Board Diagnostic Inspection System called the BAR-OIS. The BAR-OIS consists of a certified Data Acquisition Device (DAD), a computer, a bar code scanner, and a printer. The BAR-OIS requires a continuous Internet connection during a smog inspection. The

inspector uses a bar code scanner to input inspector information, the Vehicle Identification Number (VIN), and Department of Motor Vehicles (DMV) renewal information. The inspector then connects the DAD, an On Board Diagnostic scan tool, to the vehicle's DLC inside the vehicle's passenger cabin. Through the Internet connection, the DAD forms a link between the vehicle's DLC and the BAR-OIS. When requested by the BAR-OIS, the DAD retrieves OBDII data from the vehicle and transmits it to the Bureau's VID. Some of the data retrieved and recorded to the VID includes the VIN, the vehicle's communication protocol, and the Parameter Identification count.

13. For model-year 2005 and newer vehicles and on some earlier model-years, the VIN is programmed into the vehicle's Powertrain Control Module (PCM). The electronically programmed VIN (eVIN) is captured by the BAR-OIS during a smog inspection and, under normal circumstances, matches the physical VIN on the vehicle.

14. The communication protocol is a specific combination of letters and numbers used by each vehicle's on-board computer to relay information to scan tools and other computers such as the BAR-OIS. The communication protocol is programmed into the vehicle's on-board computer during manufacture and does not change. The communication protocol can be recorded in its basic characters or in an expanded form that includes additional characters. The basic form is always contained within the expanded form (i.e., ICAN11bt5 vs. ICANbt500, I194 v. I1940808, JVPW vs. JVPW1850).

15. Parameter Identifications (PIDs) are data points reported by the vehicle's OBDII system to the BAR-OIS. Examples of PIDs are engine speed/rpm, vehicle speed, engine temperature and other input/output values utilized by the OBDII system. The PID count is the number of data points reported by the OBDII system. The PID count is

programed during manufacture and does not change. Each vehicle reports a specific PID count with slight variations based on whether the vehicle is equipped with an automatic or manual transmission and in rare occurrences on vehicle trim variations.

16. As with the EIS, inspectors also perform a visual and functional test on the vehicle. Based on the results of the on-board diagnostic information and the visual and functional tests, the BAR-OIS software determines whether a vehicle passes the overall inspection. If a vehicle passes the inspection, a certificate of compliance, with a unique control number, is issued and transmitted electronically to the VID. The vehicle information and test results are also electronically transmitted to the DMV. The BAR-OIS prints a Vehicle Inspection Report (VIR), which is a physical record of the test results and shows the Smog Check Certificate of Compliance number for a vehicle that passes the smog inspection. The inspector must sign the VIR to indicate that the inspection was performed within BAR guidelines.

17. The VID contains the dates and times of all smog inspections, the identity of the vehicles tested (license plates and VINs), all data obtained during the smog check inspections, and the identities of the inspectors and stations performing the inspections. Bureau employees have access to the VID and use the information stored there when conducting investigations.

18. "Clean plugging" is a method used by some smog check stations and smog check inspectors to issue fraudulent smog check certificates of compliance. "Clean plugging" involves using a surrogate vehicle's properly-functioning OBDII system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent certificates of compliance to vehicles not in smog compliance or not present for testing. To clean plug, the DAD is connected to a vehicle other than that

which is being certified or to a data generating OBDII simulator to obtain a false smog certification.

Alleged Clean Plugging Activity in Contravention of the California Smog Inspection Program

19. On September 5, 2017, Jays Automotive issued Certificate Compliance number HF197251C after Castillo conducted a smog inspection of a 2001 Chrysler Town and Country Limited. The OIS test data from the inspection indicated a communication protocol of I914 and a PID count of 15|3. Based on OIS test data of 1,000 similar vehicles of the same year, make, and model, the expected protocol for that vehicle is JVPW and the expected PID count is 17|3.

20. On September 13, 2017, Jays Automotive issued Certificate Compliance number HF482301C after Castillo conducted a smog inspection of a 2002 Saturn SC2. The OIS test data from the inspection reported no eVIN value when the eVIN value 1G8ZY12732Z141508 should have been reported. The OIS test data also indicated a communication protocol of I914 and a PID count of 16. Based on OIS test data of 258 similar vehicles of the same year, make, and model, the expected protocol for that vehicle is JVPW and the expected PID count is 17.

21. On November 3, 2017, Jays Automotive issued Certificate Compliance number HH937166C after Castillo conducted a smog inspection of a 2001 Dodge Neon SE. The OIS test data from the inspection indicated a communication protocol of I914 and a PID count of 16. Based on OIS test data of 1,000 similar vehicles of the same year, make, and model, the expected protocol for that vehicle is JVPW and the expected PID count is 17, 18, or 19.

22. On November 22, 2017, Jays Automotive issued Certificate Compliance number HJ371992C after Castillo conducted a smog inspection of a 2004 Mazda RX8. The OIS test data from the inspection reported no eVIN value when the eVIN value JM1FE17FN440101034 should have been reported. The OIS test data also indicated a communication protocol of I914 and a PID count of 16. Based on OIS test data of 474 of similar vehicles of the same year, make, and model, and the expected protocol for that vehicle is ICAN11bt5 and the expected PID count is 37|13 or 37|8.

23. On January 31, 2018, Jays Automotive issued Certificate Compliance number HN378279C after Castillo conducted a smog inspection of a 2006 Dodge Charger SE. The OIS test data from the inspection reported no eVIN value when the eVIN value 2B3KA43R56H380384 should have been reported. The OIS test data also indicated a communication protocol of JVPW and a PID count of 15. Based on OIS test data of 1,000 similar vehicles of the same year, make, and model, the expected protocol for that vehicle is ICAN11bt5 and the expected PID count is 41 or 43|8.

THE BUREAU'S EXPERT'S TESTIMONY AND OPINION

24. The Bureau's employee Ian Evans holds the position of Program Representative II with responsibility for, among other things, the examination of smog inspection data stored in the Bureau's Smog Check database. At the administrative hearing Evans explained the purpose and function of California's Smog Check program. He explained how the Bureau compiles, maintains, and conducts analyses of numerous vehicles' smog check data, including eVIN values, expected communication protocol, and expected PID counts. Evans explained how the Bureau's comparative analysis of such data enables the Bureau to determine the percentage of vehicles statewide reporting expected OBD characteristics. Evans additionally explained his

familiarity with some technician's use of surrogate vehicles or other sources to clean plug and thereby circumvent the Smog Check program.

25. Evans explained he conducted an investigation in which he reviewed the *OIS Test Details* containing OIS test data corresponding with smog check inspections performed at Jays Automotive. His investigation revealed discrepant OIS test data for five vehicles as set forth in Factual Findings 19 through 23.

26. A sworn declaration supplementing Evan's testimony sets forth data tables of the known, documented information for each of the five vehicles. (See Exhibit 7.) In general terms, but for a small percentage of vehicles, each of the five vehicles is expected to transmit information that conforms to data reported on numerous similar vehicles tested statewide. As Evans explained, the small percentage of non-conforming vehicles is attributed to vehicles that are erroneously tested.

27. Evans opined the discrepant OIS test data for each of the five vehicles are indicative of Castillo's failure to connect the DAD to any of the five vehicles on which Castillo purportedly conducted a smog inspection. Evans offered no opinion regarding the identity of any surrogate vehicle or other source to which Castillo may have connected the DAD.

RESPONDENT'S EXPERT'S TESTIMONY AND OPINION

28. Oscar Gomez is an automotive technician expert whose experience includes serving as an instructor, shop technician, and shop foreman at or on behalf of several entities. He holds multiple Bureau-issued licenses, including smog technician, brake adjuster, and lamp adjuster licenses, as well as several Automotive Service Excellence certifications. (See Exhibit H.)

29. Gomez also examined the *OIS Test Details* for each of the five vehicles at issue. Gomez's examination focused on the manufacturer-installed Calibration Identification or Calibration Verification Numbers associated with each of the five vehicles, which are short-sited as "CAL ID" and "CAL CVN" on the *OIS Test Details*. Based on his examination of the CAL ID and CAL CVN alpha-numerical values reported on the OIS Test Detail corresponding to each of the five vehicles at issue, he was able to deduce the identity of the surrogate vehicles used during Castillo's smog inspection of the five vehicles. He opined a 2001 Dodge Caravan served as surrogate for the 2001 Chrysler Town and Country Limited,² a 2002 Honda Accord served as surrogate for the 2002 Saturn SC2,³ a 2001 Honda Accord or Honda Civic served as surrogate for the 2001 Dodge Neon SE,⁴ "an Asian" vehicle served as surrogate for the 2004 Mazda RX8,⁵ and a Dodge Neon served as surrogate for the 2006 Dodge Charger SE.⁶

30. Gomez admitted he did not witness any actual inspection of the five vehicles at issue. Gomez nonetheless opined Castillo was either careless verifying each vehicle's identity or confused about which vehicle he actually connected to the DAD when multiple vehicles were present at the station.

² See Factual Finding 19.

³ See Factual Finding 20.

⁴ See Factual Finding 21.

⁵ See Factual Finding 22.

⁶ See Factual Finding 23.

Credible Evidence Establishes Clean Plugging Activity Occurred at Jays Automotive

31. Evans and Gomez's testimony and opinions are consistent in one material aspect. Both conclude the standards and requirements of the California Smog Inspection Program were subverted during the smog inspection of each of the five vehicles at issue at Jays Automotive. The specific identity of surrogate vehicles used to facilitate that subversion is immaterial for establishing cause for discipline.

32. It is established that the discrepancy between the reported values and the expected values for the five vehicles—the 2001 Chrysler Town and Country Limited, 2002 Saturn SC2, 2001 Dodge Neon SE, 2004 Mazda RX8, and 2006 Dodge Charger SE—is due to clean plugging of the vehicles.

33. Jays Automotive issued fraudulent Smog Certificate of Compliance numbers HF197251C, HF482301C, HH937166C, HJ371992C, and HN378279C for the 2001 Chrysler Town and Country Limited, 2002 Saturn SC2, 2001 Dodge Neon SE, 2004 Mazda RX8, and 2006 Dodge Charger SE, respectively.

34. The fraudulent Certificates of Compliance issued to the 2001 Chrysler Town and Country Limited, 2002 Saturn SC2, 2001 Dodge Neon SE, 2004 Mazda RX8, and 2006 Dodge Charger SE were electronically acquired from the Bureau through the OIS platform at Jays Automotive using an Automated Clearing House payment method.

Factors in Aggravation, Mitigation, and Rehabilitation

35. Dangourian instructed Castillo "not to cut corners" and "to take his time" conducting smog inspections at Jays Automotive. Up until his receipt of notice of the

Accusation in this matter, Dangourian assumed Castillo was compliant with those instructions because, as he asserted at the hearing, "We don't do fraudulent smog checks." Dangourian asked Castillo about the allegations in the Accusation, and, according to Dangourian, Castillo denied any intentional clean plugging. Dangourian vouched for Castillo's truthfulness stating Castillo has worked over 16 years at Jays Automotive and he (Dangourian) "would have known." Dangourian provided no incentives, including remuneration, to Castillo for certifying a vehicle passes its smog inspection.

36. As of August 30, 2019, Jays Automotive no longer employs Castillo. (See Factual Finding 6.) Castillo voluntarily resigned from Jays Automotive for reasons pertaining to his health.

37. Dangourian acknowledges he is responsible for supervising the operations and practices of Jays Automotive and the conduct of its employees. Dangourian explained he now does his own audits and he is "more hands on." After Castillo's departure from Jays Automotive, Dangourian implemented *Smog Inspection Audit Policy and Procedures (Audit Policy and Procedures)*, which specifies procedures for smog check inspections consistent with the California Smog Check Inspection Program. At the time of the administrative hearing, Dangourian, his son, and an employee technician were the three Bureau licensees performing smog inspections at Jays Automotive, and all three have signed copies of the *Audit Policy and Procedures*. Dangourian testified, "I am happy about this (meaning the *Audit Policy and Procedures*) because if I implemented it back then these mistakes would not have slipped through."

38. Dangourian is married. He serves his church community in addition to the Boys and Girls Club through volunteer activities. Jays Automotive is the source of

his livelihood, and he is concerned about losing it. He explained, "This business has been my life passion. Long time ago it stopped being a business. Now I am working with my customers' grandchildren. They hug and kiss me."

Costs of Investigation and Prosecution

39. Complainant submitted *Declaration of Ian Evans* and *Declaration of Mark Casillas* certifying the Bureau incurred a total of \$752.91 investigating the operations of Jays Automotive.

40. Complainant submitted *Certification of Prosecution Costs: Declaration of Stephanie J. Lee* certifying the Department of Justice, Office of the Attorney General, billed the Bureau \$3,905 for legal services provided through November 22, 2019.

41. At the administrative hearing, counsel for complainant represented the Bureau's investigative and prosecution costs, as set forth in Factual Findings 39 and 40, should be reduced by 25 percent in light of the *Stipulated Revocation of License and Order* Castillo has entered. (See footnote 1.) Thus, the Bureau seeks to recover 75 percent or \$3,493.44 from Dangourian, as owner of and doing business as Jays Automotive.

42. Evidence of Dangourian's financial circumstances and ability, as owner doing business as Jays Automotive, to pay a cost award was not offered at the administrative hearing.

LEGAL CONCLUSIONS

1. Business and Professions Code section 9884.7, authorizes the Director of the Department (Director) to suspend, revoke, or place on probation the registration

of an automotive repair dealer for, among other things, making untrue or misleading statements (Bus. & Prof. Code, § 9884.7, subd. (a)(1)); engaging in conduct constituting fraud (Bus. & Prof. Code, § 9884.7, subd. (a)(4)); or failing in any material respect to comply with Automotive Repair Act or regulations adopted pursuant to the Automotive Repair Act (Bus. & Prof. Code, § 9884.7, subd. (a)(6)).

2. Business and Professions Code section 9884.7 further authorizes the Director to invalidate the registration for all places of business operated by an automotive repair dealer "upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of the [Automotive Repair Act] or regulations adopted pursuant to it." (Bus. & Prof. Code, § 9884.7, subd. (c)). (See also Health and Safety Code section 44072.8 providing for the revocation or suspension of a licensee's additional licenses when a license has been revoked or suspended following a hearing.)

3. Health and Safety Code section 44072.2, authorizes the Director to suspend, revoke, or take other disciplinary action against a license should the license holder violate provisions of the Motor Vehicle Inspection Program establishing inspections standards and test procedures as set forth in sections 44012, 44015, and 44059 in this instance (Health & Saf. Code, § 44072.2, subd. (a)); should the license holder violate regulations relating to the licensed activities, including California Code of Regulations, title 16, sections 3340.24, subdivision (c) (prohibiting false or fraudulent issuance of certificate of compliance), 3340.30, subdivision (a) (mandating inspections and tests in accordance with the Motor Vehicle Inspection Program), 3340.35, subdivision (c) (mandating issuance of certificate of compliance for inspected vehicle in accordance with Motor Vehicle Inspection Program), 3340.41, subdivision (c) (prohibiting the entry of false information about a vehicle into the emissions

inspection system) and 3340.42 (establishing applicable emissions test methods and standards) (Health & Saf. Code, §44072.2, subd. (c)); or should the license holder commit any act involving dishonesty, fraud, or deceit (Health & Saf. Code, § 44072.2, subd. (d)).

4. Health and Safety Code section 44072.10 authorizes the revocation of the license of any smog check technician or station licensee who fraudulently certifies or participates in the fraudulent inspection of vehicles.

5. The Accusation alleges six causes for discipline of Dangourian's registration (ARD 193266) and station license (RC 193266). To impose discipline, complainant must prove the allegations asserted in the six causes for discipline by a preponderance of the evidence standard of proof. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911,916-917.)

6. The owner of a license is obligated to see that the license is not used in violation of the law. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 34, 360; see also *Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793 [applying a non-delegable theory of tort liability to discipline licensed automobile dealer for the misconduct of salesperson acting under its license].) Dangourian owns and does business as Jays Automotive, a Bureau registrant and licensee, which employed Castillo to conduct smog check inspections. Dangourian is therefore responsible for ensuring Castillo's compliance with the Automotive Repair Act, its implementing regulations and the Motor Vehicle Inspection Program. A preponderance of the evidence establishes Castillo clean plugged five vehicles—the 2001 Chrysler Town and Country Limited, 2002 Saturn SC2, 2001 Dodge Neon SE, 2004 Mazda RX8, and 2006 Dodge Charger SE—in his capacity as a Bureau licensee

employed at Jays Automotive, which issued Certificates of Compliance for the vehicles that were untrue, misleading, or otherwise fraudulent. (Factual Findings 8 through 34.) Such conduct is contrary to the California Smog Inspection Program policy objectives as codified in the Automotive Repair Act and the Motor Vehicle Inspection Program and promulgated regulations. Under these circumstances, the registration and station license Dangourian holds as an owner doing business as Jays Automotive are subject to discipline for the misconduct Castillo committed in the scope of his employment at Jays Automotive.

7. With respect to the First Cause for Discipline (Untrue or Misleading Statements), complainant has established by a preponderance of the evidence cause exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), to discipline Automotive Repair Dealer Registration number ARD 193266 issued to Jay Dangourian, owner, doing business as Jays Automotive, for untrue and misleading statements, by reason of Factual Findings 8 through 34 and Legal Conclusion 6.

8. With respect to the Second Cause for Discipline (Fraud), complainant has established by a preponderance of the evidence cause exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), to discipline Automotive Repair Dealer Registration number ARD 193266 issued to Jay Dangourian, owner, doing business as Jays Automotive, for fraud, by reason of Factual Findings 8 through 34 and Legal Conclusion 6.

9. With respect to the Third Cause for Discipline (Material Violation of Automotive Repair Act), complainant has established by a preponderance of the evidence cause exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), to discipline Automotive Repair Dealer Registration number ARD 193266 issued to Jay Dangourian, owner, doing business as Jays Automotive, for

violations of the Automotive Repair Act and promulgated regulations, by reason of Factual Findings 8 through 34 and Legal Conclusion 6.

10. With respect to the Fourth Cause for Discipline (Violations of the Motor Vehicle Inspection Program), complainant has established by a preponderance of the evidence cause exists pursuant to Health and Safety Code sections 44012, 44014, and 44072.2, subdivision (a), to discipline Smog Check Station License number RC 193266 issued to Jay Dangourian, owner, doing business as Jays Automotive, for violations of the Motor Vehicle Inspection Program, by reason of Factual Findings 8 through 34 and Legal Conclusion 6.

11. With respect to the Fifth Cause for Discipline (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program), complainant has established by a preponderance of the evidence cause exists pursuant to Health and Safety Code section 44072.2, subdivision (c), and California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, to discipline Smog Check Station License number RC 193266 issued to Jay Dangourian, owner, doing business as Jays Automotive, for violations of the regulations promulgated pursuant to the Motor Vehicle Inspection Program, by reason of Factual Findings 8 through 34 and Legal Conclusion 6.

12. With respect to the Sixth Cause for Discipline (Dishonesty, Fraud or Deceit), complainant has established by a preponderance of the evidence cause exists pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline Smog Check Station License number RC 193266 issued to Jay Dangourian, owner, doing business as Jays Automotive, for dishonesty, fraud or deceit, by reason of Factual Findings 8 through 34 and Legal Conclusion 6.

13. Pursuant to California Code of Regulations, title 16, section 3395.4, the Bureau has promulgated *Guidelines for Disciplinary Penalties and Terms of Probation* (March 2016), which requires consideration of specified factors in aggravation and mitigation when determining appropriate discipline. As set forth in Factual Finding 7, Dangourian's registration and station license have a history of one prior citation stemming from Castillo's conduct while working at Jays Automotive. That prior citation is remote in that it occurred one half decade ago. During the hearing Dangourian unequivocally acknowledged his responsibility for supervising the operations and practices of Jays Automotive and the conduct of its employees. (Factual Finding 37.) Importantly, Dangourian instructed Castillo not to cut corners doing smog inspections (Factual Finding 35), and having learned about Castillo's non-compliant smog inspections he stepped up his oversight and monitoring of operations at Jays Automotive. He implemented practices and procedures designed to prevent future recurrence. (Factual Finding 37.) In doing so, Dangourian not only demonstrated appreciation for the gravity of the matter, but also a determination to adhere to the statutes, rules, and regulations governing licensed activities at Jays Automotive. Based on the totality of the evidence in this case, a stayed revocation of Automotive Repair Dealer Registration number ARD 193266 and Smog Check Station License number RC 193266 issued to Dangourian as owner doing business as Jays Automotive with terms and conditions is consistent with the Bureau's mandate to protect the public.⁷

⁷ This level of discipline—a standard stay order—warrants no discipline of Dangourian's Smog Check Inspector License number EO 15023 and Smog Check Repair Technician License number EI 15023 pursuant to Business and Professions Code section 9884.7 for public protection. (See Legal Conclusion 2.)

14. A registrant or licensee found to have violated the Automotive Repair Act and the Motor Vehicle Inspection Program may be directed to pay a sum not to exceed the reasonable costs of investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3.)

15. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. App. 4th 32, 45, the Bureau must exercise its discretion to reduce or eliminate costs so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Bureau] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Bureau, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position, and the Bureau must consider whether or not the licensee has raised a colorable defense. The Bureau must also consider the licensee's ability to make cost award payments.

16. Complainant has proved the allegations in the first, second, third, fourth, fifth, and sixth causes for discipline in the Accusation. Considering all the *Zuckerman* factors, respondent shall pay the Bureau costs of investigation and prosecution totaling \$3,493.44⁸ as set forth in the Order below.

⁸ See Factual Finding 41.

ORDER

1. Auto Repair Dealer Registration Number ARD 193266 issued to Jay Dangourian, owner, doing business as Jays Automotive is revoked; however, the revocation is stayed and the registration is placed on probation for a period of three (3) years with terms and conditions specified below.

2. Smog Check Station License Number RC 193266 issued to Jay Dangourian, owner, doing business as Jays Automotive is revoked; however, the revocation is stayed and the station license is placed on probation for a period of three (3) years with terms and conditions specified below.

TERMS AND CONDITIONS OF PROBATION

1. **Obey All Laws:** During the period of probation, respondent Jay Dangourian, owner, doing business as Jays Automotive (hereinafter respondent) 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:** Respondent shall, within thirty (30) days of the effective date of the decision and within thirty (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: Respondent shall provide Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide Bureau representatives unrestricted access to all records pursuant to the Bureau laws and regulations.

5. Cost Recovery: Respondent shall pay the Bureau of Automotive Repair \$3,493.44 for the reasonable costs of the investigation and enforcement of case number 79/18-2754. Respondent shall make such payment in accordance with a Bureau-approved payment plan. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent 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 in case number 79/18-2754. 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.

6. Maintain Valid License: Respondent shall, at all times while on probation, maintain a current and active registration and licenses with the Bureau, including any period during which probation is tolled. If respondent's license is expired at the time the decision becomes effective, the license must be renewed by respondent within thirty (30) days of that date. If respondent's license expires during a

term of probation, by operation of law, or otherwise, then upon renewal respondent's license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active license during the period of probation shall also constitute a violation of probation.

7. License Surrender: Following the effective date of the decision staying invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request 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 respondent's 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.

Respondent may not petition the Director for reinstatement of a surrendered registration 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 respondent applies 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.

8. Tolling of Probation: If, during probation, respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify the Bureau in writing within ten (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, training requirements, and that respondents obey all laws, shall be held in abeyance during any period of time of thirty (30) days or more in which a respondent(s) is 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 thirty (30) days or more in which respondent is 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.

9. Violation of Probation: If respondent 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 respondent 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.

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
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10. Completion of Probation: Upon successful completion of probation, respondent's affected licenses will be fully restored or issued without restriction, if respondent meets all current requirements for licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

DATE: January 8, 2020

DocuSigned by:

C2CF22333C40434...

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

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7

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

12 In the Matter of the Accusation Against:
13 **JAY DANGOURIAN, OWNER**
DBA JAYS AUTOMOTIVE
14 305 N. Broadway
Santa Maria, CA 93454
15
16 Automotive Repair Dealer Registration No.
ARD 193266
Smog Check Station License No, RC 193266,
17
18 **and**
MARTIN TOVAR CASTILLO
19 132 Pelican Lane
Guadalupe, CA 93434
20
21 Smog Check Inspector License No. EO 146703
Smog Check Repair Technician License No. EI
146703
22
23 OTHER RELATED LICENSES
JAY DANGOURIAN
1420 Solomon Rd.
24 Santa Maria, CA 93455
25
26 Smog Check Inspector License No. EO 15023
Smog Check Repair Technician License No. EI
15023,
27
28 Respondents.

Case No. 79/18-2754

A C C U S A T I O N

1 Complainant alleges:

2 PARTIES

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

5 2. In 1997, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer
6 Registration Number ARD 193266 to Jay Dangourian dba Jays Automotive (Respondent Jays
7 Automotive). The Automotive Repair Dealer Registration was in full force and effect at all times
8 relevant to the charges brought herein and will expire on February 29, 2020, unless renewed.

9 3. On or about April 18, 1997, the Bureau issued Smog Check Station License Number
10 RC 193266 to Respondent Jays Automotive. The Smog Check Station License was in full force
11 and effect at all times relevant to the charges brought herein and will expire on February 29,
12 2020, unless renewed.

13 4. In 1997, the Bureau issued Basic Area Technician License EB 15023 to Jay
14 Dangourian (Respondent Dangourian), under SB 1997, the biennial Smog Check Program
15 implemented January 1, 1990. License number EB 15023 was due to expire on July 31, 2013,
16 however, was cancelled on April 26, 2013.

17 5. In 1997, the Bureau issued Smog Check Inspector License Number EO 15023 to
18 Respondent Dangourian. The Smog Check Inspector License was in full force and effect at all
19 times relevant to the charges brought herein and will expire on July 31, 2019, unless renewed.

20 6. In 1997, the Bureau issued Smog Check Repair Technician License Number EI
21 15023 to Respondent Dangourian. The Smog Check Repair Technician License was in full force
22 and effect at all times relevant to the charges brought herein and will expire on July 31, 2019,
23 unless renewed.

24 7. In 2003, the Bureau issued Advanced Emission Specialist License No. EA 146703 to
25 Martin Tovar Castillo (Respondent Castillo). Said license was renewed pursuant to Respondent
26 Castillo's election as Smog Check Inspector (EO) License No. 146703, effective February 6,
27 2013, and Smog Check Repair Technician (EI) License No. 146703, effective February 12,
28

1 2013.¹ The Smog Check Inspector license was in full force and effect at all times relevant to the
2 charges brought herein, and will expire on January 31, 2021, unless renewed. The Smog Check
3 Repair Technician License expired on January 31, 2015, and has not been renewed.

4 JURISDICTION

5 8. This Accusation is brought before the Director of the Department of Consumer
6 Affairs (Director) for the Bureau, under the authority of the following laws.

7 9. Business and Professions Code ("Bus. & Prof. Code") section 9884.13 provides, in
8 pertinent part, that the expiration of a valid registration shall not deprive the Director of
9 jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to
10 render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

11 10. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
12 part, that the Director has all the powers and authority granted under the Automotive Repair Act
13 for enforcing the Motor Vehicle Inspection Program.

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

18 STATUTORY PROVISIONS

19 12. Bus. & Prof. Code section 9884.7 states, in pertinent part:

20 (a) The director, where the automotive repair dealer cannot show there
21 was a bona fide error, may refuse to validate, or may invalidate temporarily or
22 permanently, the registration of an automotive repair dealer for any of the following
23 acts or omissions related to the conduct of the business of the automotive repair
24 dealer, which are done by the automotive repair dealer or any automotive technician,
25 employee, partner, officer, or member of the automotive repair dealer.

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

.....

¹ Pursuant to California Code of Regulations, title 16 section 3340.28, subdivision (e).

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(4) Any other conduct that constitutes fraud.

....

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

....

(c) Notwithstanding subdivision (b); the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

13. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Bus. & Prof. Code.

14. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

15. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section 44012.

16. Health & Saf. Code section 44072.2 states, in pertinent 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 [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] 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 . . .

17. Health & Saf. Code section 44072.10 states, in pertinent part:

....

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

4
5 (4) Intentional or willful violation of this chapter or any regulation,
6 standard, or procedure of the department implementing this chapter . . .

6 18. Health & Saf. Code section 44072.8 states that when a license has been revoked or
7 suspended following a hearing under this article, any additional license issued under this chapter
8 in the name of the licensee may be likewise revoked or suspended by the Director.

9 REGULATORY PROVISIONS

10 19. California Code of Regulations ("CCR"), title 16, section 3340.24, subdivision (c),
11 states:

12 "The bureau may suspend or revoke the license of or pursue other legal action against a
13 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
14 certificate of noncompliance."

15 20. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
16 shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section
17 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42
18 of this article."

19 21. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
20 station "shall issue a certificate of compliance or noncompliance to the owner or operator of any
21 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
22 this article and has all the required emission control equipment and devices installed and
23 functioning correctly."

24 22. CCR, title 16, section 3340.41, subdivision (c), states that "[n]o person shall enter
25 into the emissions inspection system any vehicle identification information or emission control
26 system identification data for any vehicle other than the one being tested. Nor shall any person
27 knowingly enter into the emissions inspection system any false information about the vehicle
28 being tested."

1 documented discrepancies confirm that the vehicles were fraudulently tested during the smog
 2 inspection using the "clean plugging" method.²

3 27. Moreover, the OIS test data showed that Smog Check Technician Respondent
 4 Castillo performed all five (5) of the fraudulent smog check inspections.

5 28. The following chart illustrates the documented clean plugging activities of
 6 Respondents Jays Automotive and Castillo between September 5, 2017 and January 31, 2018:

7 **Table**

8	9	10	11	12	13
Test Date	Vehicle & License No.	Certificate No.	Fraudulent Passing Inspection Data		Expected OBDII Value
1	9/5/17	2001 Chrysler Town & Country Limited ³ 4VKD412	HF197251C	eVIN: Not Reported	eVIN: Not Expected
				Comm. Protocol: 1914	Comm. Protocol: JVPW
				PID Count: 15 3	PID Count: 17 3
2	9/13/17	2002 Saturn SC2 ⁴ N	HF482301C	eVIN: Not Reported	eVIN: 1G8ZY12732Z141508
				Comm. Protocol: 1914	Comm. Protocol: JVPW
				PID Count: 16	PID Count: 17
3	11/3/17	2001 Dodge Neon SE ⁵	HH937166C	eVIN: Not Reported	eVIN: Not Expected

21 ² "Clean plugging" refers to the use of another vehicle's properly functioning On Board
 22 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for
 23 the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog
 compliance and/or not present for testing.

24 ³ This vehicle was previously tested at another station on December 24, 2016. At that time, the
 25 OIS Test Data for this vehicle showed all of the following results which were consistent with what was
 expected: (1) eVIN was not transmitted; (2) the communication protocol reported as JVPW; and (3) PID
 count was 17|3. The vehicle failed the inspection as "Not ready" with incomplete monitors.

26 ⁴ This vehicle was previously tested at another station on September 12, 2016. At that time, the
 27 OIS Test Data for this vehicle showed all of the following results which were consistent with what was
 expected: (1) eVIN was transmitted as 1G8ZY12732Z141508; (2) the communication protocol reported as
 JVPW; and (3) the PID count was 17.

28 ⁵ This vehicle was previously tested at another station on December 5, 2015. At that time, the OIS

		4NCU469		Comm. Protocol: 1914	Comm. Protocol: JVPW
				PID Count: 16	PID Count: 17, 18, or 19
	Test Date	Vehicle & License No.	Certificate No.	Fraudulent Passing Inspection Data	Expected OBDII Value
4	11/22/17	2004 Mazda RX8 5DQE680	HJ371992C	eVIN: Not Reported	eVIN: JM1FE17N440101034
				Comm. Protocol: 1914	Comm. Protocol: ICAN11bt5
				PID Count: 16	PID Count: 37 13, or 37 8
5	1/31/18	2006 Dodge Charger SE ⁶ 5RYN973	HN378279C	eVIN: Not Reported	eVIN: 2B3KA43R56H380384
				Comm. Protocol: JVPW	Comm. Protocol: ICAN11bt5
				PID Count: 15	PID Count: 41, or 43 8

29. The data analysis conducted on Respondent Jays Automotive shows that Respondents participated in a scheme to perform at least five (5) fraudulent Smog Check Inspections resulting in the issuance of five (5) fraudulent electronic Smog Check Certificates of Compliance between September 5, 2017 and January 31, 2018.

CAUSES FOR DISCIPLINE SUBJECTING ARD REGISTRATION TO DISCIPLINARY

ACTION:

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

30. Respondent Jays Automotive's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that

Test Data for this vehicle showed all of the following results which were consistent with what was expected: (1) eVIN was not transmitted; (2) the communication protocol reported as JVPW; and (3) PID count was 17.

⁶ This vehicle was previously tested at another station on April 27, 2016. At that time, the OIS Test Data for this vehicle showed all of the following results which were consistent with what was expected: (1) eVIN was transmitted as 2B3KA43R56H380384; (2) the communication protocol reported as ICAN11bt5; and (3) the PID count was 43|8.

1 Respondent Jay Automotive made or authorized statements which Respondent Jay Automotive
2 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
3 follows: Respondent certified that the five (5) vehicles identified in paragraph 27 above had
4 passed smog inspection and were in compliance with applicable laws and regulations. In fact,
5 Respondent used clean plugging methods for the five (5) vehicles identified in paragraph 27
6 above. Respondent substituted or used a different vehicle(s), or another source, during the OBD
7 II functional tests in order to issue smog certificates of compliance for the vehicles. Respondent
8 did not properly test or inspect any of the five (5) vehicles as required by Health & Saf. Code
9 section 44012. Complainant refers to, and by this reference incorporates, the allegations
10 contained in paragraphs 24 through 28, above, as though set forth fully herein.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Fraud)

13 31. Respondent Jay Automotive's Automotive Repair Dealer Registration is subject to
14 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
15 Respondent Jay Automotive committed acts that constitute fraud by issuing electronic smog
16 certificates of compliance for the five (5) vehicles identified in paragraph 27 above, without
17 performing bona fide inspections of the emission control devices and systems on the vehicles,
18 thereby depriving the People of the State of California of the protection afforded by the Motor
19 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
20 allegations contained in paragraphs 24 through 28, above, as though set forth fully herein.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Material Violation of Automotive Repair Act)

23 32. Respondent Jay Automotive's Automotive Repair Dealer Registration is subject to
24 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that
25 Respondent Jay Automotive failed in a material respect to comply with the provisions of this
26 chapter or regulations adopted pursuant to it when he issued electronic certificates of compliance
27 for the five (5) vehicles identified in paragraph 27 above, without performing bona fide
28 inspections of the emission control devices and systems on those vehicles, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
3 paragraphs 24 through 28, above, as though set forth fully herein.

4 **CAUSES FOR DISCIPLINE SUBJECTING SMOG CHECK STATION LICENSE TO**
5 **DISCIPLINARY ACTION:**

6 **FOURTH CAUSE FOR DISCIPLINE**

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

8 33. Respondent Jays Automotive's Smog Check Station License is subject to disciplinary
9 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent Jays
10 Automotive failed to comply with the following sections of that Code:

11 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
12 performed on the five (5) vehicles identified in paragraph 27 above, in accordance with
13 procedures prescribed by the department.

14 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for the
15 five (5) vehicles identified in paragraph 27 above, without ensuring that the vehicles were
16 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
17 section 44012.

18 Complainant refers to, and by this reference incorporates, the allegations contained in
19 paragraphs 24 through 28, above, as though set forth fully herein.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant**
22 **to the Motor Vehicle Inspection Program)**

23 34. Respondent Jays Automotive's Smog Check Station License is subject to disciplinary
24 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent Jays
25 Automotive failed to comply with provisions of California Code of Regulations, title 16, as
26 follows:

27 ///

28 ///

1 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued
2 electronic smog certificates of compliance for the five (5) vehicles identified in paragraph 27
3 above.

4 b. Section 3340.35, subdivision (c): Respondent issued electronic smog certificates of
5 compliance for the five (5) vehicles identified in paragraph 27 above, even though the vehicles
6 had not been inspected in accordance with section 3340.42.

7 c. Section 3340.41, subdivision (c): Respondent knowingly entered false information
8 into the emissions inspection system for the five (5) vehicles identified in paragraph 27 above.

9 d. Section 3340.42: Respondent failed to ensure that the required smog tests were
10 conducted on the five (5) vehicles identified in paragraph 27 above, in accordance with the
11 Bureau's specifications.

12 Complainant refers to, and by this reference incorporates, the allegations contained in
13 paragraphs 24 through 28, above, as though set forth fully herein.

14 **SIXTH CAUSE FOR DISCIPLINE**

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

16 35. Respondent Jays Automotive's Smog Check Station License is subject to disciplinary
17 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent Jays
18 Automotive committed dishonest, fraudulent, or deceitful acts whereby another was injured by
19 issuing electronic smog certificates of compliance for the five (5) vehicles identified in paragraph
20 27 above, without performing bona fide inspections of the emission control devices and systems
21 on the vehicles, thereby depriving the People of the State of California of the protection afforded
22 by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference
23 incorporates, the allegations contained in paragraphs 24 through 28, above, as though set forth
24 fully herein.

25 ///

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1 CAUSES FOR DISCIPLINE SUBJECTING SMOG CHECK INSPECTOR LICENSE
2 AND SMOG CHECK REPAIR TECHNICIAN LICENSE TO DISCIPLINARY ACTION:

3 SEVENTH CAUSE FOR DISCIPLINE

4 (Violations of the Motor Vehicle Inspection Program)

5 36. Respondent Castillo's Smog Check Inspector License and Smog Check Repair
6 Technician License, are subject to disciplinary action pursuant to Health & Saf. Code section
7 44072.2, subdivision (a), in that he failed to comply with section 44012 of that Code in a material
8 respect, as follows: Respondent Castillo failed to perform the emission control tests for one or
9 more of the five (5) vehicles identified in paragraphs 27 above, in accordance with procedures
10 prescribed by the department. Complainant refers to, and by this reference incorporates, the
11 allegations contained in paragraphs 24 through 28, above, as though set forth fully herein.

12 EIGHTH CAUSE FOR DISCIPLINE

13 (Failure to Comply with Regulations Pursuant
14 to the Motor Vehicle Inspection Program)

15 37. Respondent Castillo's Smog Check Inspector License and Smog Check Repair
16 Technician License, are subject to disciplinary action pursuant to Health & Saf. Code section
17 44072.2, subdivision (c), in that he failed to comply with provisions of California Code of
18 Regulations, title 16, as follows:

19 a. Section 3340.24, subdivision (c): Respondent Castillo falsely or fraudulently issued
20 one or more electronic smog certificates of compliance for the five (5) vehicles identified in
21 paragraph 27 above.

22 b. Section 3340.30, subdivision (a): Respondent Castillo failed to inspect one or more
23 of the five (5) vehicles identified in paragraph 27 above, in accordance with Health & Saf. Code
24 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

25 c. Section 3340.41, subdivision (c): Respondent Castillo knowingly entered false
26 information into the emissions inspection system for one or more of the five (5) vehicles
27 identified in paragraph 27 above.

28 ///

1 d. Section 3340.42: Respondent Castillo failed to conduct the required smog tests on
2 one or more of the five (5) vehicles identified in paragraph 27 above, in accordance with the
3 Bureau's specifications.

4 Complainant refers to, and by this reference incorporates, the allegations contained in
5 paragraphs 24 through 28, above, as though set forth fully herein.

6 **NINTH CAUSE FOR DISCIPLINE**

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

8 38. Respondent Castillo's Smog Check Inspector License and Smog Check Repair
9 Technician License, are subject to disciplinary action pursuant to Health & Saf. Code section
10 44072.2, subdivision (d), in that Respondent Castillo committed dishonest, fraudulent, or
11 deceitful acts whereby another was injured by issuing electronic smog certificates of compliance
12 for one or more of the five (5) vehicles identified in paragraph 27 above, without performing bona
13 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
14 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
15 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
16 paragraphs 24 through 28, above, as though set forth fully herein.

17 **DISCIPLINARY CONSIDERATIONS**

18 39. To determine the degree of discipline, Complainant further alleges that:

19 a. On or about June 13, 2014, the Bureau issued Respondent Jays Automotive Citation #
20 C2014-0956, for violation of section 44012(f) of the Health and Safety Code, in that Respondent
21 Jays Automotive unlawfully issued Certificate of Compliance #PG818662C to a Bureau
22 undercover vehicle with ignition timing adjusted out of specification. A civil penalty in the
23 amount of \$1000 was assessed. Payment was received on August 4, 2014. The decision became
24 effective on August 18, 2014.

25 b. On or about June 13, 2014, the Bureau issued Respondent Castillo Citation # M2014-
26 0957, for violation of section 44032 of the Health and Safety Code, in that Respondent Castillo
27 unlawfully issued Certificate of Compliance #PG818662C to a Bureau undercover vehicle with
28 ignition timing adjusted out of specification. Along with an Order of Abatement, an 8-hour BAR

1 Certified training course was assessed. Training was completed on August 15, 2014. The
2 decision became effective on August 18, 2014.

3 OTHER MATTERS

4 40. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
5 suspend, revoke, or place on probation the registration for all places of business operated in this
6 state by Respondent Danourian, upon a finding that he has, or is, engaged in a course of repeated
7 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

8 41. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License No.
9 RC 193266, issued to Respondent Danourian doing business as Jays Automotive is revoked or
10 suspended following a hearing, any additional license issued under Chapter 5 of Part 5 of
11 Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked
12 or suspended by the Director.

13 42. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
14 No. EO 146703 and/or Smog Check Repair License No. EI 146703 issued to Martin Tovar
15 Castillo is revoked or suspended following a hearing, any additional license issued under Chapter
16 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
17 likewise revoked or suspended by the Director.

18 PRAYER

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

21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 193266 issued to Jay Dangourian dba Jays Automotive;

23 2. Revoking or suspending any other automotive repair dealer registration issued to Jay
24 Dangourian;

25 3. Revoking or suspending Smog Check Station License No. RC 193266, issued to Jay
26 Dangourian dba Jays Automotive;

27 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
28 Division 26 of the Health and Safety Code in the name of Jay Dangourian;

- 1 5. Revoking or suspending Smog Check Inspector License No. EO 146703, issued to
- 2 Martin Tovar Castillo;
- 3 6. Revoking or suspending Smog Check Repair License No. EI 146703, issued to
- 4 Martin Tovar Castillo;
- 5 7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
- 6 Division 26 of the Health and Safety Code in the name of Martin Tovar Castillo;
- 7 8. Ordering Respondents to pay the Bureau the reasonable costs of the investigation and
- 8 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 9 9. Taking such other and further action as deemed necessary and proper.

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DATED: February 26, 2019 

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

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