

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

In the Matter of the Accusation Against:

DARREN THANH PHAM, OWNER dba

EXPRESS SMOG CHECK

320 Couch Street, Suite D

Vallejo, CA 94590

Automotive Repair Dealer Registration No. ARD 276292

Smog Check Station License No. RC 276292

and

DARREN PHAM

155 Blue Bird Ct.

Vallejo, CA 94591

Smog Check Inspector License No. EO 151194

Smog Check Repair Technician License No. EI 151194

and

REGINALD LOUIE LITAN GRENAS

912 Javan Way

Suisun, CA 94585

Mailing address:

246 San Marino Avenue

Vallejo, CA 94589

Smog Check Inspector License No. EO 631676

Smog Check Repair Technician License No. EI 631676

and

JAY M. CARUNGCONG

410 Mokelumne Drive

Vallejo, CA 94589

Smog Check Inspector License No. EO 638623

Respondents.

Case No. 79/19-16991

OAH No. 2022030702

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 February 8, 2023.

IT IS SO ORDERED this 19 day of December, 2022.



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

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

In the Matter of the Accusation Against:

DARREN THANH PHAM, Owner,

d.b.a. EXPRESS SMOG CHECK,

Automotive Repair Dealer Registration No. ARD 276292

Smog Check Station License No. RC 276292;

DARREN PHAM,

Smog Check Inspector License No. EO 151194

Smog Check Repair Technician License No. EI 151194;

REGINALD LOUIE LITAN GRENAS,

Smog Check Inspector License No. EO 631676

Smog Check Repair Technician License No. EI 631676;

JAY M. CARUNGCONG,

Smog Check Inspector License No. EO 638623

Respondents.

Agency Case No. 79/19-16991

OAH No. 2022030702

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 11 to 13, 2022, by videoconference.

Deputy Attorney General Justin R. Surber represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair.

Attorney Michael B. Levin represented all respondents. Respondent Darren Thanh Pham did not attend the hearing. Respondents Reginald Louie Litan Grenas and Jay M. Carungcong were present throughout the hearing.

The matter was submitted for decision on October 13, 2022.

FACTUAL FINDINGS

1. Respondent Darren Thanh Pham owns a smog inspection and automotive repair business. On April 18, 2014, the Bureau registered respondent Pham as an automotive repair dealer, doing business as Express Smog Check (Registration No. ARD 276292). On September 10, 2014, the Bureau licensed respondent Pham, again doing business as Express Smog Check, as a Smog Check Station (License No. RC 276292). This registration and license are scheduled to expire April 30, 2023.

2. Since 2005, respondent Pham also has held a license to conduct smog inspections. The Bureau licensed Pham most recently as a Smog Check Inspector (License No. EO 151194), effective September 12, 2013, and expiring July 31, 2023. The

Bureau also licensed Pham as a Smog Check Repair Technician (License No. EI 151194) effective September 12, 2013; this license expired without renewal on July 31, 2017.

3. Respondent Reginald Louie Litan Grenas has held smog inspection licenses since 2010. The Bureau licensed respondent Grenas most recently as a Smog Check Inspector (License No. EO 631676), effective June 24, 2014, and expiring June 30, 2024. The Bureau also licensed Grenas as a Smog Check Repair Technician (License No. EI 631676) effective June 24, 2014; this license expired without renewal on June 30, 2022.

4. The Bureau licensed respondent Jay M. Carungcong as a Smog Check Inspector (License No. EO 638623), effective October 5, 2015, and expiring November 30, 2023.

5. At all times relevant to this matter, respondents Grenas and Carungcong have worked for respondent Pham at Express Smog Check. Grenas performs smog inspections, repairs vehicles, and maintains business records. Carungcong performs smog inspections. Except as noted below in Finding 29.c, the evidence did not establish whether Pham participates personally in any aspects of Express Smog Check's day-to-day business activities.

6. Acting in his official capacity as Chief of the Bureau of Automotive Repair, complainant Patrick Dorais brought an accusation against all respondents in December 2020. Complainant brought a first amended accusation in December 2021. Respondents requested a hearing.

7. Complainant alleges three chief factual bases for suspending or revoking respondents' licenses.

a. First, complainant alleges that both respondent Grenas and respondent Carungcong have performed intentionally fraudulent smog inspections at Express Smog Check, by connecting the smog testing device to a vehicle or vehicle computer other than the vehicle the inspector had identified to the testing device and for which the inspector caused Express Smog Check to issue a passing certificate of compliance. Complainant identifies two such "clean-plugging" inspections in June 2019, one by respondent Grenas and one by respondent Carungcong, and a third in November 2019 by respondent Grenas.

b. Second, complainant alleges that respondents Grenas and Carungcong also have performed intentionally fraudulent smog inspections at Express Smog Check by causing Express Smog Check to issue certificates of compliance for vehicles that required testing to confirm the integrity of the vehicles' fuel tanks and lines, but for which they caused the test equipment to report results from testing a calibration device rather than the test vehicles. Using statistical methods, complainant estimates that respondent Grenas performed more than 10 such "clean-tanking" tests between January 1, 2020, and April 25, 2021, and that respondent Carungcong performed more than 90 during this same period.

c. Third, complainant alleges that on October 14, 2019, respondent Carungcong caused Express Smog Check to issue a certificate of compliance to a vehicle that lacked a necessary component of its emissions control system. Complainant alleges that Carungcong should have identified the missing component during his visual inspection of this vehicle's emissions control components, and should have reported to the Bureau and to the person who brought the vehicle in for inspection that the vehicle had failed its inspection.

///

“Clean-Plugging” Inspections

8. On June 1, 2019, Express Smog Check issued a certificate of compliance for a 2015 Subaru Crosstrek that no licensed smog inspector actually had inspected. Respondent Grenas caused Express Smog Check to issue this certificate of compliance.

9. On June 18, 2019, Express Smog Check issued a certificate of compliance for a 2002 Chrysler Sebring that no licensed smog inspector actually had inspected. Respondent Carungcong caused Express Smog Check to issue this certificate of compliance.

10. On November 19, 2019, Express Smog Check issued a certificate of compliance for a 2011 Mercedes-Benz Sprinter that no licensed smog inspector actually had inspected. Respondent Grenas caused Express Smog Check to issue this certificate of compliance.

11. For each of the three vehicles described in Findings 8 through 10, one aspect of the vehicle’s smog inspection should have been a computer-to-computer inspection of the vehicle’s emissions control software. In each case, the inspector should have accomplished this test aspect by using a cable to connect the test vehicle to the test device, after having identified the same vehicle to the test device.

INSPECTIONS BY GRENAS

12. On the two occasions described in Findings 8 and 10, Grenas identified the test vehicles to Express Smog Check’s test device by scanning bar codes on documents the customers had brought with the vehicles, rather than by scanning bar codes on the vehicles themselves. In each case, the document Grenas used to identify

the vehicle to the test device described a vehicle that was not the one Grenas actually connected to the test device.

13. The Bureau's Smog Check Manual (see Cal. Code Regs., tit. 16, § 3340.45) states that smog inspectors who use "vehicle registration documents to scan vehicle information . . . must first verify the VIN [Vehicle Identification Number] shown on the registration document matches the VIN on the vehicle." If the document and vehicle do not match, the inspector must (1) use the vehicle VIN to identify the test vehicle, not the document VIN; and (2) "inform the customer of the mismatch."

14. In addition to the computer inspections described in Finding 11, complete smog inspections for the three vehicles described in Findings 8 through 10 should have included visual and functional inspections. The visual inspection involves looking carefully at the vehicle's engine and emissions control devices; the functional inspection involves starting the vehicle.

15. The evidence did not identify what vehicle Grenas actually connected to the test device on June 1, 2019, after having scanned documents stating that he would test a 2015 Subaru Crosstrek. In light of the matters stated in Findings 13 and 14, however, Grenas could not have conducted a complete smog inspection of the vehicle he had connected without realizing that it was not the 2015 Subaru Crosstrek he had identified to the test device.

16. On June 18, 2019, the vehicle Grenas actually connected to the test device after having scanned documents stating that he would test a 2011 Mercedes-Benz Sprinter (a small diesel-fueled van) was a 2015 Lexus NX 300H (a four-door gasoline-fueled sport utility vehicle). The documents Grenas scanned stated that the Sprinter van's license plate should say "SOJRNRS." The license plate on the Lexus sport

utility vehicle says "TRUPATH." The same person owns both the van and the sport utility vehicle.

17. In light of the matters stated in Findings 13, 14, and 16, Grenas could not have conducted a complete smog inspection of the Lexus sport utility vehicle without realizing that it was not the Mercedes-Benz Sprinter van he had identified to the test device.

18. By causing Express Smog Check to issue certificates of compliance for the vehicles described in Findings 8 and 10, Grenas represented that he had confirmed the vehicles' identification in accordance with the Smog Check Manual, and that he had performed visual and functional inspections of these vehicles. These representations were false.

INSPECTION BY CARUNGCONG

19. On May 30, 2018, at a different smog check station, the 2002 Chrysler Sebring that Carungcong purported to test on June 18, 2019, failed a smog inspection. On that occasion, the smog inspector identified the vehicle to the test device by scanning the VIN directly from the vehicle body.

20. On March 28, 2019, at a different smog check station, the 2002 Chrysler Sebring that Carungcong purported to test on June 18, 2019, failed a smog inspection. On that occasion, the smog inspector identified the vehicle to the test device by scanning the VIN directly from the vehicle body.

21. On May 28, 2019, at Express Smog Check, Carungcong performed a smog inspection on the same 2002 Chrysler Sebring that he purported to test again on

June 18, 2019. On this occasion, Carungcong identified the vehicle to the test device by scanning the VIN directly from the vehicle body. The vehicle failed the inspection.

22. On the occasion described in Finding 9, Carungcong identified the 2002 Chrysler Sebring to Express Smog Check's test device by manually entering the vehicle's VIN.¹ He then intentionally connected the smog test device to a different vehicle, or to a vehicle-simulating device, causing the device to report a false result for the 2002 Chrysler Sebring.

"Clean-Tanking" Inspections

23. For most gasoline-powered vehicles manufactured between 1976 and 1995, a complete smog inspection includes assessing the vehicle's fuel tank and lines for vapor leaks. This assessment, the Low-Pressure Fuel Evaporative Test (LPFET), uses a special LPFET device. The inspector connects the LPFET device to the vehicle's fuel tank, and introduces nitrogen gas into the fuel tank through the device in a quantity sufficient to bring the pressure inside the tank and fuel lines slightly above atmospheric pressure. To check the fuel system for leaks, the LPFET device measures how long the fuel system maintains pressure (if it does).

///

¹ The Smog Check Manual states that an inspector should enter a VIN manually only if "the vehicle is not equipped with a bar code or the bar code is illegible, and the registration documents are not available or do not include a bar code." In light of the matters stated in Findings 19 through 21, Carungcong's decision to enter the VIN manually for this inspection did not comply with the Smog Check Manual.

24. The LPFET device requires a smog check station staff member to calibrate it every 72 hours. To calibrate the device, the staff member connects the test device to a standard two-gallon stainless steel calibration tank and runs the device through a calibration program that is distinct from the device's vehicle testing program.

25. If a vehicle's fuel system has no leaks, the volume of nitrogen the LPFET device introduces into the fuel system to achieve the test pressure indicates the volume within the fuel system that liquid fuel does not occupy. This "headspace volume" varies from vehicle to vehicle, and from test to test on the same vehicle, depending on factors including the size and configuration of the fuel system and how much liquid gasoline is in the fuel tank.

26. The LPFET device reports the test vehicle's headspace volume to the Bureau. In the Bureau's testing laboratories, using a variety of vehicles under different test conditions, properly functioning LPFET devices rarely if ever measure headspace volumes smaller than 7 gallons, even when staff members testing the devices have filled the test vehicles' gasoline tanks completely. Properly functioning LPFET devices consistently measure the headspace volume in a standard calibration tank as between 1.5 and 2.5 gallons, however.

27. Statewide, between January 1, 2020, and April 25, 2021, smog check stations performed almost 600,000 passing LPFET inspections. Headspace volumes these stations reported from these tests ranged from 0 gallons to more than 40 gallons. About 17% of these passing LPFET inspections measured headspace volumes less than 3 gallons, and about 14% measured headspace volumes between 1.5 and 2.5 gallons.

///

28. Passing LPFET inspections between January 1, 2020, and April 25, 2021, occurred at about 4,500 smog check stations statewide. Approximately half of these stations reported no headspace volume measurements between 1.5 and 2.5 gallons during this period. On the other hand, just 78 stations (fewer than 2 percent of all stations) accounted for half of the headspace volume measurements between 1.5 and 2.5 gallons that occurred during this period.

LPFET INSPECTIONS AT EXPRESS SMOG CHECK

29. Between January 1, 2020, and April 25, 2021, Express Smog Check reported 172 passing LPFET inspections to the Bureau.²

a. Grenas performed 19 of these passing inspections. In 13 of these 19 inspections (68%), the LPFET device reported that the test vehicle's headspace volume was between 1.8 and 2.0 gallons. Between February 1, 2020, and May 9, 2020, Grenas performed eight passing inspections, every one of which returned a headspace volume measurement between 1.8 and 2.0 gallons.

b. Carungcong performed 152 of these passing inspections. In 94 of these 152 inspections (62%), the LPFET device reported that the test vehicle's headspace volume was between 1.8 and 2.1 gallons. Between June 2, 2020, and July 24, 2020, Carungcong performed eight passing inspections, every one of which returned a headspace volume measurement between 1.9 and 2.0 gallons. Between February 26,

² The evidence did not establish how many LPFET inspection failures occurred at Express Smog Check during this period.

2021, and March 22, 2021, Carungcong again performed eight passing inspections, every one of which returned a headspace volume measurement of 2.0 gallons.

c. Pham performed one of these passing inspections, in which the LPFET device reported that the test vehicle's headspace volume was 38.6 gallons.

30. For several reasons, Grenas prefers that customers whose vehicles require LPFET testing present their vehicles with full gasoline tanks. He and Carungcong testified that they use price discounts to encourage this practice. Although this testimony is weakly credible, it is irrelevant because of the matters stated below in Finding 34.

STATISTICAL ANALYSIS

31. Bureau Air Quality Engineer II Francis DiGenova performed a statistical analysis of Express Smog Check's passing LPFET headspace volume measurements between January 1, 2020, and April 25, 2021, to assess whether these measurements, as a group, could have resulted from tests performed correctly on real test vehicles. His analysis and testimony are undisputed and persuasive.

32. Given the statewide headspace volume measurement pattern summarized above in Finding 27, the probability that 107 headspace volume measurements at Express Smog Check between January 1, 2020, and April 25, 2021, would have been between 1.5 and 2.5 gallons if inspectors had performed accurate tests on 172 real, non-leaking test vehicles is smaller than 1 in 190 trillion.

a. With respect only to the tests Grenas performed, the probability that 13 headspace volume measurements between January 1, 2020, and April 25, 2021, would

have been between 1.5 and 2.5 gallons if Grenas had performed accurate tests on 19 real, non-leaking test vehicles is smaller than 1 in 12 million.

b. With respect only to the tests Carungcong performed, the probability that 94 headspace volume measurements between January 1, 2020, and April 25, 2021, would have been between 1.5 and 2.5 gallons if Carungcong had performed accurate tests on 152 real, non-leaking test vehicles is smaller than 1 in 150 trillion.

33. Given the statewide headspace volume measurement pattern summarized above in Finding 27, the probability that eight accurate tests in a row on real, non-leaking test vehicles would return headspace volume measurements between 1.5 and 2.5 gallons is smaller than 1 in 7 million.

34. The statewide headspace volume measurement pattern summarized above in Finding 27 reflects all passing vehicles, not only vehicles with full gasoline tanks. The matters stated in Findings 26 and 28 show, however, that full gasoline tanks rarely if ever cause headspace volume measurements as low as 2.5 gallons.

35. The analysis summarized in Findings 32 through 34 proves that most or all of Grenas's and Carungcong's passing LPFET inspections between January 1, 2020, and April 25, 2021, that produced headspace volume measurements between 1.5 and 2.5 gallons did not result from tests performed correctly on real test vehicles.

LPFET DEVICE MALFUNCTION

36. DiGenova has worked in smog inspection device development and testing for many years, including since April 2014 at the Bureau. He knows of no way a LPFET device could malfunction that would cause the device to seem to an inspector

to perform normally, while repeatedly reporting false headspace volume measurements in exactly the same volume as the calibration tank.

37. After hearing DiGenova's testimony, Grenas went to Express Smog Check to inspect the LPFET test device. He found no obvious indication that it might be malfunctioning in any way. Grenas had conducted no such device inspection between December 2021 (when complainant served the first amended accusation alleging "clean tanking") and the hearing date. Neither he nor Carungcong testified to any unusual observations about the LPFET device's function at any time during this period.

FRAUDULENT LPFET INSPECTIONS

38. Using the LPFET inspection and calibration protocols summarized in Finding 23 and 24, a smog check inspector could not unintentionally or unknowingly substitute the LPFET calibration tank for a test vehicle.

39. Between January 1, 2020, and April 25, 2021, Grenas regularly performed LPFET inspections at Express Smog Check using the calibration tank instead of the test vehicle. Although Grenas may have performed some proper LPFET inspections during this period, his inspections substituting the calibration tank for the test vehicle were deliberately fraudulent.

40. Between January 1, 2020, and April 25, 2021, Carungcong regularly performed LPFET inspections at Express Smog Check using the calibration tank instead of the test vehicle. Although Carungcong may have performed some proper LPFET inspections during this period, his inspections substituting the calibration tank for the test vehicle were deliberately fraudulent.

///

Improper Visual Inspection

41. On October 14, 2019, an undercover Bureau representative brought a 2012 Honda Accord to Express Smog Check for a smog inspection.³

42. Before the Bureau representative took the Accord to Express Smog Check, a different Bureau employee had altered its Positive Crankcase Ventilation (PCV) system. Specifically, the employee had removed the PCV valve, and a hose that ordinarily conducts smoke and other engine exhaust gases away from the PCV valve to recirculate them back through the engine. He plugged the hole where gases would have reentered the engine if the PCV assembly had been in place, and covered the hole where the PCV valve had been with a filter allowing exhaust gases to escape into the atmosphere.

43. The Accord's service manual states that the Accord should have a PCV assembly. In addition, the hose the Bureau employee removed was about twelve inches long, and the PCV assembly when in place on the Accord's engine would have been visible without moving or disassembling any other parts. A reasonably careful smog inspector would have recognized on visual inspection of the Accord's engine that the PCV assembly was missing.

44. Respondent Carungcong performed a smog inspection on the Accord, and reported that he had inspected the Accord's engine visually and that its PCV system was present without defects. He should have reported that the PCV system had

³ Complainant alleges that the Bureau representative did not receive a written estimate of the cost for this inspection before it occurred, but no non-hearsay evidence addressed this allegation.

been "tampered." Respondent Carungcong caused Express Smog Check to issue a certificate of compliance for the Accord, even though the Accord did not in fact meet all emissions control requirements.

45. No evidence suggested that Carungcong realized on October 14, 2019, that the Accord's PCV assembly was missing, but reported intentionally that the Accord was intact. The evidence did not establish whether Carungcong performed a negligent visual inspection, or failed to perform any visual inspection of the Accord's emissions system.

Additional Evidence

46. On January 2, 2019, the Bureau issued Citation No. M2019-35 to respondent Carungcong, for having caused Express Smog Check to issue a certificate of compliance on November 8, 2018, to a vehicle that lacked its PCV assembly. After appeal, this citation now is final.

47. On January 2, 2019, the Bureau issued Citation No. C2019-34 to respondent Pham, for the smog inspection error described in Finding 46. After appeal, this citation now is final.

48. On June 15, 2012, the Bureau issued Citation No. M2012-1783 to respondent Grenas, for having caused Express Smog Check⁴ to issue a certificate of compliance on May 8, 2012, to a vehicle that lacked a required emissions control system component. After appeal, this citation now is final.

⁴ Respondent Pham was not registered as Express Smog Check's owner at this time.

Costs

49. The Bureau incurred \$12,112.65 in staff costs to investigate the smog inspections in question in this matter. Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(1). These costs are necessary and reasonable for the tasks described in the declaration.

50. Through October 5, 2022, the Bureau had incurred \$25,353.75 in costs for legal services provided to complainant by the Department of Justice in this matter. Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(2). These costs are necessary and reasonable for the tasks described in the declaration.

LEGAL CONCLUSIONS

1. The burden of proof in this proceeding is on complainant, and the standard of proof is a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

Causes for Discipline Against Pham's Automotive Repair Dealer Registration

2. The Bureau may discipline a registered automotive repair dealer for the registrant's own errors, or for errors the registrant's employees commit in the course of conducting the automotive repair dealer's business. (Bus. & Prof. Code, § 9884.7.)

FALSE OR MISLEADING STATEMENTS (FIRST, NINTH, EIGHTEENTH CAUSES FOR DISCIPLINE)

3. The Bureau may discipline respondent Pham's automotive repair dealer registration upon proof that Pham or any Express Smog Check employee has made any untrue or misleading statement in the course of business. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).)

4. Under this statute, the matters stated in Findings 8 through 22 constitute cause for discipline against Pham.

5. Under this statute, the matters stated in Findings 23 through 40 constitute cause for discipline against Pham.

6. Under this statute, the matter stated in Findings 41 through 45 constitute cause for discipline against Pham.

FRAUD (SECOND AND TENTH CAUSES FOR DISCIPLINE)

7. The Bureau also may discipline respondent Pham's automotive repair dealer registration upon proof that Pham or any Express Smog Check employee has committed fraud in the course of Express Smog Check's business. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).)

8. Under this statute, the matters stated in Findings 9, 11, and 19 through 22 constitute cause for discipline against Pham.

9. Under this statute, the matter stated in Findings 23 through 40 constitute cause for discipline against Pham.

///

STATUTORY AND REGULATORY VIOLATIONS (ELEVENTH AND NINETEENTH CAUSES FOR DISCIPLINE)

10. The Bureau may discipline respondent Pham's automotive repair dealer registration upon proof that Pham or any Express Smog Check employee has violated any statute or regulation governing Express Smog Check's business. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).)

11. These regulations forbid automotive repair dealers to keep false records or issue false statements. (Cal. Code Regs., tit. 16, §§ 3371, 3373.) Under Business and Professions Code section 9884.7 and these regulations, the matters stated in Findings 23 through 40 constitute cause for discipline against Pham.

12. These regulations also require smog check stations to ensure that smog inspectors conduct inspections and issue certificates of compliance only in accordance with the Smog Check Manual and with Bureau protocols. (Cal. Code Regs., tit. 16, §§ 3340.24, subd. (c), 3340.35, subd. (c), 3340.42, subd. (b), 3340.45, subd. (b), 3371, 3373.) Under Business and Professions Code section 9884.7 and these regulations, the matters stated in Findings 41 through 45 constitute cause for discipline against Pham.

13. Automotive repair dealers must give customers written estimates before performing services. (Bus. & Prof. Code, § 9884.9, subd. (a); Cal. Code Regs., tit. 16, § 3353.) The matters stated in Finding 41 do not constitute cause for discipline against Pham under this statute and regulation.

Causes for Discipline Against Pham's Smog Check Station License

14. The Bureau may discipline the smog check station license held by respondent Pham for Express Smog Check upon proof that Pham has violated any of

the laws and regulations governing the smog check program, or has participated in fraudulent vehicle inspections. (Health & Saf. Code, §§ 44072.2, subds. (a), (c), 44072.10.)

STATUTORY AND REGULATORY VIOLATIONS (THIRD, TWELFTH, AND TWENTY-FIRST CAUSES FOR DISCIPLINE)

15. Smog check laws and regulations require, in pertinent part, that Pham ensure that Express Smog Check's employees conduct inspections in accordance with the Bureau's testing specifications. (Health & Saf. Code, § 44012; Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a), 3340.42.) They also require Pham to ensure that Express Smog Check's inspectors do not make false statements in the course of performing and reporting smog inspections. (Health & Saf. Code, § 44059; Cal. Code Regs., tit. 16, §§ 3340.24, subd. (c), 3340.41, subd. (c), 3340.45.)

16. Under these statutes and regulations, the matter stated in Findings 8 through 22 constitute cause for discipline against Pham.

17. Under these statutes and regulations, the matter stated in Findings 23 through 40 constitute cause for discipline against Pham.

18. Under these statutes and regulations, the matter stated in Findings 41 through 45 constitute cause for discipline against Pham.

DISHONESTY AND FRAUD (FOURTH, THIRTEENTH, AND TWENTIETH CAUSES FOR DISCIPLINE)

19. The Bureau may discipline the smog check station license held by respondent Pham for Express Smog Check upon proof that the licensee has committed dishonest acts in the smog check program. (Health & Saf. Code, § 44072.2, subd. (d).)

The Bureau must revoke any smog check station license upon proof that the licensee has participated in intentional smog inspection fraud. (*Id.*, § 44072.10.)

20. Under both Health and Safety Code sections 44072.2 and 44072.10, the matters stated in Findings 9, 11, and 19 through 22 constitute cause for discipline against Pham. In addition, the matters stated in Findings 8, 10, and 12 through 18 constitute cause for discipline against Pham under Health and Safety Code section 44072.2, although not under section 44072.10.

21. Under both Health and Safety Code sections 44072.2 and 44072.10, the matters stated in Findings 23 through 40 constitute cause for discipline against Pham.

22. Under Health and Safety Code section 44072.2, the matters stated in Findings 41 through 45 constitute cause for discipline against Pham. These matters do not constitute cause for discipline against Pham under Health and Safety Code section 44072.10.

Causes for Discipline Against Grenas's Smog Check Licenses

23. The Bureau may discipline the smog check licenses held by respondent Grenas upon proof that Grenas has violated any of the laws and regulations governing the smog check program, or has participated in fraudulent vehicle inspections. (Health & Saf. Code, §§ 44072.2, subds. (a), (c), 44072.10.)

STATUTORY AND REGULATORY VIOLATIONS (FIFTH AND FOURTEENTH CAUSES FOR DISCIPLINE)

24. Smog check laws and regulations require, in pertinent part, that Grenas conduct inspections in accordance with the Bureau's testing specifications. (Health & Saf. Code, § 44012; Cal. Code Regs., tit. 16, §§ 3340.30; subd. (a), 3340.42.) They also

forbid Grenas to make false statements in the course of performing and reporting smog inspections. (Health & Saf. Code, § 44059; Cal. Code Regs., tit. 16, §§ 3340.24, subd. (c), 3340.41, subd. (c), 3340.45.)

25. Under these statutes and regulations, the matters stated in Findings 8, 10, and 12 through 18 constitute cause for discipline against Grenas.

26. Under these statutes and regulations, the matters stated in Findings 23 through 28, 29.a, 31, 32.a, and 33 through 39 constitute cause for discipline against Grenas.

DISHONESTY AND FRAUD (SIXTH AND FIFTEENTH CAUSES FOR DISCIPLINE)

27. The Bureau may discipline respondent Grenas's smog check licenses upon proof that Grenas has committed dishonest acts in the smog check program. (Health & Saf. Code, §§ 44072.2, subd. (d), 44072.6.) The Bureau must revoke any smog check license upon proof that the licensee has participated in intentional smog inspection fraud. (*Id.*, § 44072.10.)

28. Under Health and Safety Code section 44072.2, the matters stated in Findings 8, 10, and 12 through 18 constitute cause for discipline against Grenas. These matters do not constitute cause for discipline against Grenas under Health and Safety Code section 44072.10.

29. Under both Health and Safety Code sections 44072.2 and 44072.10, the matters stated in Findings 23 through 28, 29.a, 31, 32.a, and 33 through 39 constitute cause for discipline against Grenas.

///

Causes for Discipline Against Carungcong's Smog Inspection License

30. The Bureau may discipline the smog check inspector license held by respondent Carungcong upon proof that Carungcong has violated any of the laws and regulations governing the smog check program, or has participated in fraudulent vehicle inspections. (Health & Saf. Code, §§ 44072.2, subds. (a), (c), 44072.10.)

STATUTORY AND REGULATORY VIOLATIONS (SEVENTH, SIXTEENTH, AND TWENTY-THIRD CAUSES FOR DISCIPLINE)

31. Smog check laws and regulations require, in pertinent part, that Carungcong conduct inspections in accordance with the Bureau's testing specifications. (Health & Saf. Code, § 44012; Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a), 3340.42.) They also forbid Carungcong to make false statements in the course of performing and reporting smog inspections. (Health & Saf. Code, § 44059; Cal. Code Regs., tit. 16, §§ 3340.24, subd. (c), 3340.41, subd. (c), 3340.45.)

32. Under these statutes and regulations, the matters stated in Findings 9, 11, and 19 through 22 constitute cause for discipline against Carungcong.

33. Under these statutes and regulations, the matters stated in Findings 23 through 28, 29.b, 31, 32.b, 33 through 38, and 40 constitute cause for discipline against Carungcong.

34. Under these statutes and regulations, the matters stated in Findings 41 through 45 constitute cause for discipline against Carungcong.

///

///

DISHONESTY AND FRAUD (EIGHTH, SEVENTEENTH, AND TWENTY-SECOND CAUSES FOR DISCIPLINE)

35. The Bureau may discipline the smog check inspector license held by respondent Carungcong upon proof that Carungcong has committed dishonest acts in the smog check program. (Health & Saf. Code, § 44072.2, subd. (d).) The Bureau must revoke any smog check license upon proof that the licensee has participated in intentional smog inspection fraud. (*Id.*, § 44072.10.)

36. Under both Health and Safety Code sections 44072.2 and 44072.10, the matters stated in Findings 9, 11, and 19 through 22 constitute cause for discipline against Carungcong.

37. Under both Health and Safety Code sections 44072.2 and 44072.10, the matters stated in Findings 23 through 28, 29.b, 31, 32.b, 33 through 38, and 40 constitute cause for discipline against Carungcong.

38. Under Health and Safety Code section 44072.2, the matters stated in Findings 41 through 45 constitute cause for discipline against Carungcong. These matters do not constitute cause for discipline against Carungcong under Health and Safety Code section 44072.10.

Other Matters

39. Upon proof of a course of repeated and willful violations of the laws governing automotive repair dealers, the Bureau may discipline any other automotive repair dealer registrations Pham holds. (Bus. & Prof. Code, § 9884.7, subd. (c).) Although the matters stated in Findings 8 through 45 establish repeated violations at Express Smog Check of the laws governing automotive repair dealers, these matters

do not establish, in light of the matters stated in Finding 5, that these violations were willful on Pham's part. Moreover, the matters stated in Finding 1 do not establish that Pham holds a registration for any automotive repair facility aside from Express Smog Check.

40. If the Bureau disciplines Pham's smog check station license, it also may discipline any other smog check license Pham holds or has held. (Health & Saf. Code, §§ 44072.6, 44072.8.) Because of the matters stated in Finding 2, the matters stated in Legal Conclusions 4, 5, 6, 8, 9, 11, 12, 16, 17, 18, 20, 21, and 22 constitute cause for discipline against Pham's smog check inspector and repair technician licenses. The matters stated in Findings 1 through 4 do not establish that Pham holds or ever has held any other smog check license.

41. If the Bureau disciplines Grenas's smog check inspector license, it also may discipline any other smog check license Grenas holds or has held. (Health & Saf. Code, §§ 44072.6, 44072.8.) Because of the matters stated in Finding 3, the matters stated in Legal Conclusions 25, 26, 28, and 29 constitute cause for discipline against Grenas with respect both to his smog check inspector license and his smog check repair technician license. The matters stated in Findings 1 through 4 do not establish that Grenas holds or ever has held any other smog check license.

42. If the Bureau disciplines Carungcong's smog check inspector license, it also may discipline any other smog check license Carungcong holds or has held. (Health & Saf. Code, §§ 44072.6, 44072.8.) The matters stated in Findings 1 through 4 do not establish that Carungcong holds or ever has held any other smog check license.

///

///

Costs

43. A licensee found to have committed a violation of the statutes and regulations governing automotive repair may be required to pay the Bureau the reasonable costs of its investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3.) As set forth in Findings 49 and 50, the total reasonable costs in this matter were \$37,466.40.

44. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards, to ensure that the board does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id.* at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid.*) Last, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid.*)

45. All of these matters have been considered, but justify no reduction in respondents' obligation to reimburse the Bureau in this matter. Respondents shall be jointly and severally liable for these costs.

Disciplinary Considerations

46. The matters stated in Legal Conclusions 20, 21, 29, 36, and 37 require the Bureau to revoke Pham's smog check station license and Grenas's and Carungcong's smog check inspector and repair technician licenses. In combination with the matters

stated in Legal Conclusions 8 and 9 and 39 through 42, these matters justify revoking all respondents' licenses and registrations.

ORDER

1. Automotive Repair Dealer Registration No. ARD 276292, held by respondent Darren Thanh Pham to do business under the name Express Smog Check, is revoked.
2. Smog Check Station License No. RC 276292, held by respondent Darren Thanh Pham to do business under the name Express Smog Check, is revoked.
3. Smog Check Inspector License No. EO 151194, held by respondent Darren Thanh Pham, is revoked.
4. Smog Check Repair Technician License No. EI 151194, held by respondent Darren Thanh Pham, is revoked.
5. Smog Check Inspector License No. EO 631676, held by respondent Reginald Louie Litan Grenas, is revoked.
6. Smog Check Repair Technician License No. EI 631676, held by respondent Reginald Louie Litan Grenas, is revoked.
7. Smog Check Inspector License No. EO 638623, held by respondent Jay M. Carungcong, is revoked.
8. Respondents Darren Thanh Pham, Reginald Louie Litan Grenas, and Jay M. Carungcong shall pay the Bureau of Automotive Repair \$37,466.40 for the

reasonable costs of the investigation and enforcement of Case No. 79/19-16991.
Respondents are jointly and severally liable for this reimbursement.

DATE: 10/31/2022

Juliet E. Cox

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings