

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

In the Matter of the Accusation Against:

CHEVREM CORPORATION d.b.a. CLEAR BLUE TEST ONLY

SMOG STATION 2, FATIH TEKIN,

President/Secretary/Treasurer,

Automotive Repair Dealer No. ARD 244942

Smog Check, Test Only, License No. TC 244942;

FATIH TEKIN

Smog Check Inspector License No. EO 26524;

EREN KARADELI

Smog Check Inspector License No. EO 633764;

MAHBOOB KARIMI

Brake Adjuster License No. BA 633632, Class C

Smog Check Inspector License No. EO 633632;

Respondents.

Agency Case No. 79/17-1224

OAH No. 2020090280

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on February 1, 2021, by videoconference.

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

Respondent Mahboob Karimi was present at the hearing, representing himself.

The record closed and the matter was submitted for decision on February 1, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 19, 2019, complainant Patrick Dorais issued the accusation in his official capacity as Chief of the Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs, alleging eight causes for discipline against Chevrem Corporation, doing business as Clear Blue Test Only Smog Station 2, Fatih Tekin, President/Secretary/Treasurer, (Clear Blue); Fatih Tekin (Tekin); Eren Karadeli; (Karadeli), and Mahboob Karimi (Karimi).

2. Respondents Clear Blue, Tekin, and Karadeli reached stipulated agreements with the Bureau. As a result, the hearing proceeded only against the remaining respondent, Karimi (seventh and eighth causes for discipline).

3. On November 13, 2013, the Bureau issued Smog Check Inspector License No. 633632 to respondent Karimi. The license was active at all times relevant to this proceeding and will expire on May 31, 2021, unless renewed. Respondent has no history of discipline upon his license.

4. Beginning in March 2015, smog check inspections of most vehicles in California are performed pursuant to the BAR-OIS protocol. Instructions for performing inspections are included in the Bureau's Smog Check Manual. At the beginning of each inspection, the technician enters his or her license number into the BAR-OIS computer system, as well as a password. Technicians are not permitted to share their passwords with others. As part of a BAR-OIS inspection, the on-board diagnostic system of the vehicle being tested is connected to the Bureau's database by means of a data acquisition device. All vehicles manufactured after 2005, and many manufactured earlier, have an electronic vehicle identification number (eVIN), which is identical to the vehicle identification number physically present on the vehicle. If the vehicle has an eVIN stored in its computer, the eVIN is transmitted during the OIS inspection. Vehicles also transmit a communication protocol during the OIS inspection, which is the "language" used by the vehicle's computer. The protocol is programmed during the manufacturing process and does not change. Vehicles of the same make, model, and year will use the same protocol. A PID (parameter identification) count is also transmitted during an OIS inspection. The PID count is the number of data points reported by the vehicle's computer. Each make, model, and year of vehicle will have an expected PID count (or range of PID counts.) When performing a smog inspection, the technician is required to confirm that the VIN inputted into the OIS system is correct and matches the vehicle being tested.

Clean plugging is the illegal practice of substituting one vehicle for another during the on-board diagnostic portion of a smog inspection. It can be detected when the data transmitted by the vehicle does not match what is expected to be transmitted for that year, make, and model of vehicle.

Clean Plugging

5. Roy Peach is a Bureau Program Representative I. Peach performed a review of data of smog inspections performed by respondent Karimi. Peach was able to establish that respondent Karimi engaged in clean plugging on seven occasions between September 2016 and March 2017, by analyzing data provided by the vehicles' computers during the smog inspections. In a detailed investigation report, Peach analyzed and documented these seven separate instances of clean plugging, which are set forth in paragraphs 41 through 43 of the accusation. Respondent was identified as the technician who performed these seven inspections and in each case a certificate of compliance was issued to a vehicle that was not actually inspected.

6. Respondent stipulated that the factual allegations contained in the accusation against him were true and that those facts constitute a cause for discipline.

Respondent's Evidence

7. Respondent admitted performing the inspections at issue. Respondent fully cooperated with the investigation and produced all records when requested. Respondent organizes car shows to raise money for various charities. Respondent clean plugged the vehicles in question so that their owners would continue to provide vehicles for car shows. Respondent continues to organize car shows for charities. More recently he has not been able to organize a car show due to the COVID-19 pandemic. Respondent acknowledged his wrongdoing and expressed remorse for his actions.

8. Respondent was criminally charged with violations of Penal Code section 115, subdivision (a), perjury, and Health and Safety section 44059, making a false statement/perjury, both felonies. On June 20, 2019, respondent accepted diversion. which required him to complete 120 hours of community service and obey all laws. Upon completion, the charges would be dismissed. Respondent successfully completed diversion and on June 10, 2020, the charges were dismissed.

9. Respondent is no longer employed by Clear Blue. He has continued performing smog inspections and has not engaged in clean plugging any vehicle. The criminal case was a wake-up call for him. Respondent states that he will never again do anything to jeopardize his license. He complied with all the conditions of his diversion.¹ He wishes to retain his smog check inspector license so that he can continue performing smog inspections and provide support for his family. Respondent will comply with any and all terms of probation should it be granted.

Costs

10. The Department of Justice submitted a declaration establishing that it has billed the Bureau \$7,315 for legal services provided through January 29, 2021. Attached to the declaration is a spreadsheet detailing the tasks performed and time spent by each identified legal professional of the Department of Justice. At hearing,

¹ Pretrial diversion allows certain criminal defendants to comply with terms and conditions for a set period at the end of which the charges will be dismissed if the defendant has complied with all conditions.

counsel for complainant orally amended the amount of costs so that they were specific to respondent Karimi, to \$2,904. The amended amount of costs is reasonable.

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

2. Health and Safety Code section 44702.2, subdivisions (a) and (c), authorize the Bureau to discipline the license of a smog check inspector if the licensee violates the statutes and regulations governing the licensed activities. The seven clean plugging incidents violated several statutes and regulations including: failing to ensure that the emission control tests were performed in accordance with prescribed procedures (Health & Saf. Code, § 44012); failing to perform a visual and/or functional inspection of the required equipment (Health & Saf. Code, § 44012, subd. (f)); failing to perform tests of emission control devices and systems (Health & Saf. Code, § 44032); knowingly making false statements when issuing the fraudulent certificates (Health & Saf. Code, § 44059); failing to inspect and test vehicles in accordance with statutes, regulations and procedures (Cal. Code Regs., tit. 16, § 3340.30, subdivision (a)); knowingly entering false information into the emissions inspection system (Cal. Code Regs., tit. 16, § 3340.41, subdivision (c)); and failing to conduct the required smog tests and inspections on those vehicles in accordance with the Smog Check Manual (Cal. Code Regs., tit. 16, §§ 3340.42, subd. (b)(2) & 3340.45, subd. (a)(2)). Cause exists to

discipline the smog check inspector license of respondent based on the matters set forth in Factual Findings 5 through 7.

3. Health and Safety Code section 44072.2, subdivision (d), authorizes the Bureau to discipline a smog check inspector license if the licensee engages in fraudulent conduct. Issuing a certificate of compliance as a result of clean plugging is fraud. Respondent committed this act seven times. (Factual Findings 5-7.) Cause exists to discipline respondent's smog check inspector license for fraud.

Determination of Discipline

4. Having established cause for discipline against respondent, the issue is what level of discipline to impose. The Bureau set forth factors to be considered when determining appropriate discipline in its Guidelines for Disciplinary Orders and Terms of Probation (rev. March 2016) (Guidelines). Pursuant to the Guidelines, aggravating factors to be considered are whether the unlawful act is part of a pattern of practice and whether there is evidence of conduct which constitutes fraud. A mitigating factor to be considered is whether there is an absence of prior disciplinary action. For violations of Health and Safety Code section 44072.2, subdivisions (a) and (c), the minimum recommended discipline is revocation stayed with a two-year term of probation. For violating Health and Safety Code section 44072.2, subdivision (d), the minimum recommended discipline is revocation stayed with a five-year term of probation. The maximum recommended discipline is revocation.

5. Over a six-month period, respondent clean plugged seven vehicles. The fraudulent conduct is significant and was part of a pattern of practice. Respondent has no other history of discipline. (Factual Finding 3.) Four years have elapsed since respondent last engaged in clean plugging, during which respondent has continued

performing smog inspections. Respondent has accepted responsibility for his misconduct, complied fully with his diversion program, and demonstrated a credible and significant change in attitude, which is an important factor in assessing rehabilitation. Upon consideration of the record as a whole, it is determined that allowing respondent to keep his license on a probationary basis following a 15-day suspension of his license, with appropriate conditions, including the completion of a training course, will adequately protect the public and impress upon respondent the importance of following the Bureau's required inspection procedures.

Costs

6. Business and Professions Code section 125.3 authorizes the Bureau to recover its reasonable costs of investigation and enforcement in disciplinary proceedings. As set forth in Factual Finding 10, complainant has reasonably incurred \$2,904 in prosecution costs in connection with enforcement of this matter.

7. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court established standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees are not deterred from exercising their right to an administrative hearing. Among those standards are whether or not the licensee was successful at hearing in getting the charges reduced or outright dismissed; the licensee's good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

In this case, respondent provided evidence that formed a basis for determining that a stayed revocation with probation, rather than outright revocation was sufficient

to protect the public. In consideration of these factors, it is determined that it is appropriate to reduce the Board's cost recovery to \$2,000.

ORDER

Smog Check Inspector License No. EO 633632 issued to Mahboob Karimi is revoked. However, the revocation is stayed, and respondent is placed on probation for five years on the following terms and conditions.

1. Actual Suspension

Smog Check Inspector License No. EO 633632, issued to respondent Mahboob Karimi is suspended for 15 consecutive days beginning on the effective date of the decision and order.

2. Obey All Laws

During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondent.

3. Quarterly Reporting

During the period of probation, respondent shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, 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.

4. Report Financial Interests

Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR 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 Business and Professions Code section 9884.6.

5. Access to Examine Vehicles and Records

Respondent shall provide BAR 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 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

6. 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 BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent 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 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.

7. 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 BAR'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.

8. Maintain Valid License

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

9. Cost Recovery

Respondent shall pay the Bureau of Automotive Repair \$2,000 for the reasonable costs of the investigation and enforcement of this case. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six 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 for case No. 79/ 17-1224. 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. BAR 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.

10. Completion of Probation

Upon successful completion of probation, respondent's affected registration and/or license will be fully restored or issued without restriction, if respondent meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

11. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR 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 the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If Respondent applies to BAR 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 BAR and left outstanding at the time of surrender.

12. Training Course

During the period of probation, respondent shall attend and successfully complete a BAR-specified and -approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

13. Notification to Employer

When performing services that fall within the scope of his or her license, respondent shall provide each of his or her current or future employers a copy of the decision and the underlying Accusation before commencing employment. Notification

to respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

DATE: 03/01/2021

Signed Copy on File
TRACI C. BELMORE
Administrative Law Judge
Office of Administrative Hearings