

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

In the Matter of the Accusation Against:

TRUNG D. TRAN – OWNER, dba T AND D SMOG TEST

13332 Prairie Ave.

Hawthorne, CA 90250

Automotive Repair Dealer Registration No. ARD 284163

Smog Check Test Only Station License No. TC 284163

FRANK DAVIS ROSALES

1441 E. 53rd Street

Los Angeles, CA 90011

Smog Check Inspector License No. EO 640847

Smog Check Repair Technician License No. EI 640847

and

TRUNG D. TRAN

3417 Lombardo Dr.

Santa Ana, CA 92704

Smog Check Inspector License No. EO 639108

Respondents.

Case No. 79/20-10755

OAH No. 2021060123

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 FEB 11 2022.

IT IS SO ORDERED this 29 day of December, 2021.



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:

**TRUNG D. TRAN—Owner, dba T AND D SMOG TEST,
Automotive Repair Dealer Registration No. ARD 284163,
Smog Check Test Only, Station License No.TC 284163;**

FRANK DAVIS ROSALES,

**Smog Check Inspector License No. EO 640847,
Smog Check Repair Technician License No. EI 640847;**

and

**TRUNG D. TRAN,
Smog Check Inspector License No. EO 639108;**

Respondents.

Agency Case No. 79/20-10755

OAH No. 2021060123

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on October 21, 2021.

Leslie A. Walden, Deputy Attorney General, appeared on behalf of complainant Patrick Dorais, Chief, Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs (Department).

William D. Ferreira, Attorney at Law, appeared on behalf of respondents Trung D. Tran, owner, doing business as D and T Smog Test (Station), Frank David Rosales (respondent Rosales or Mr. Rosales), and Trung D. Tran (respondent Tran or Mr. Tran), all of whom were present. Mr. Tran used the services of a Vietnamese language interpreter.

Testimony and documents were received in evidence. The record was held open to allow complainant to submit redacted documents by October 25, 2021. The record was closed but again reopened to allow complainant to submit documentation of investigation costs by November 24, 2021, and to allow respondent to reply by December 3, 2021.

The record was closed and the matter was submitted for decision on December 3, 2021.

SUMMARY

Complainant established that respondents Station and Rosales engaged in clean plugging 13 vehicles in violation of the Automotive Repair Act and the Motor Vehicle Inspection Program. Cause therefore exists to discipline all of those respondents' registrations and licenses. Complainant did not establish, however, that the clean plugging was intentional. Revocation, therefore, would be unduly punitive. A three-year probationary period for respondents Station and Rosales, and a short suspension for respondent Rosales, will protect the public. Cause does not exist to discipline respondent Tran's smog check inspector license.

FACTUAL FINDINGS

Jurisdiction and Parties

1. Complainant filed this action in his official capacity.
2. Respondent Station is an automotive repair and smog check facility located in Hawthorne. The Bureau issued an automotive repair dealer registration (ARD 284163) to respondent Station on July 7, 2016. The registration is scheduled to expire on July 31, 2022. The Bureau also licensed respondent Station as a smog check, test only, station (TC 284163) on July 26, 2016. Station's smog check, test only, station license is scheduled to expire on July 31, 2022. Station was certified as a STAR station on October 18, 2016.
3. The Bureau issued to respondent Rosales a Smog Check Inspector (EO) license (EO 640847) on January 8, 2018. The license was scheduled to expire on October 31, 2021. The Bureau issued to respondent Rosales a Smog Check Repair

Technician (EI) license (EI 640847) on September 6, 2018. The license is scheduled to expire on October 31, 2022.

4. The Bureau issued a Smog Check Inspector (EO) license (EO 639108) to respondent Tran on March 21, 2016. The license is scheduled to expire on February 28, 2022.

5. After service of the Accusation, respondents timely filed a Notice of Defense, seeking a hearing. This hearing followed.

Smog Test Procedures

6. A smog check consists of three hands-on components: visual, functional, and either exhaust gas sampling for cars built before 2000 or onboard computer system diagnostic sampling for newer cars. A vehicle must pass all three components to receive a Certificate of Compliance. The visual inspection informs the technician of which emissions control components are installed in the vehicle. The functional inspection involves starting and turning off the vehicle to see, for example, whether the check engine light turns on and off appropriately.

7. The third component is at issue here; all the vehicles in this case were subject to onboard computer system diagnostic sampling. The technician must identify the vehicle and enter information into a smog check analyzer platform. Under California law, beginning in March 2015, a smog inspector conducting a smog test inspection on most vehicles built after 1999 is required to retrieve information from the tested vehicle's On-Board Diagnostic Inspection System (OIS).

8. The licensed inspector connects the smog check station's test computer through a cable, called the Data Acquisition Device (DAD), to a Diagnostic Link

Connector (DLC), a data port found inside the vehicle's passenger cabin at varying locations, depending on the vehicle model. Through the DAD cable, the station's computer retrieves information from the vehicle's on-board computer. The on-board computer monitors wear and tear to the vehicle, triggers the check engine light before anything actually goes wrong with emissions-related components, for example, the catalytic converter, and monitors exhaust emissions to see whether a problem is pending.

9. During the smog test, the data retrieved from the vehicle's on-board computer is sent to the test station's computer and then transmitted over the internet to the Bureau's database, known as the Vehicle Information Database (VID). The VID records every smog check performed in California. The data transmitted to the VID includes the "eVIN," a test protocol, and a parameter identification (PID) count. Each of these elements is described in more detail below.

10. The eVIN is the Vehicle Identification Number (VIN) in electronic form. The eVIN must match the VIN stamped on a metal badge that is typically affixed to the top of the vehicle's dashboard in front of the driver, visible through the windshield. Some vehicles have a bar code on a doorpost that, when scanned, also transmits the VIN. Although some vehicles built between 2000 and 2005 do not transmit an eVIN, the majority do so, and vehicles built after 2005 are required to be able to transmit an eVin.

11. The test protocol is the communication language used by the vehicle's on-board computer and power train module to transmit data to the test station's computer. It is a combination of letters and numbers that indicates one of several available computer languages. One of these available test protocols will be specific to a vehicle manufacturer and vehicle year and model.

12. The PID count refers to the number of data points transmitted from the tested vehicle. The data may include, for example, the engine coolant temperature, intake air temperature, fuel mixture, and other data used by the on-board computer system to check for proper engine performance and compliance with smog laws. Each year, make, and model of vehicle reports a specific known PID count, with occasional slight variations, programmed during the manufacture of the vehicle. At a minimum, a vehicle will report a PID count of the number of data points reporting from the on-board computer and power train control module that include data that is specific to emissions controls.

13. A licensed smog check technician or inspector is the only person authorized by the Bureau to perform smog tests. The technician or inspector enters a personal access code and license number into the test station's computer to use the OIS to perform smog tests.

14. Licensed smog check technicians and inspectors are required to follow the inspection procedures set forth in The Smog Check Manual (Manual). (Cal. Code Regs, tit. 16, § 3340.45.)

15. If a vehicle passes all parts of a smog test, it will be issued a Certificate of Compliance that is transmitted automatically to the Bureau's VID. The smog test station also prints the VIR, which the inspector signs and dates under penalty of perjury, indicating whether the vehicle passed the smog test and, if so, the unique number assigned to the Certificate of Compliance. The printout is given to the vehicle owner, and the station is required to save a copy. The Certificate of Compliance is also transmitted to the DMV for use in vehicle registration.

16. In some circumstances, smog check inspectors and smog test station operators engage in the illegal practice of clean plugging, whereby the vehicle purportedly being tested is not connected to the test station's computer system. Instead, the test station's DAD is plugged into another data source, either another vehicle or a simulator, an electronic device that produces data of the type that should be communicated from the vehicle being tested. By this method, a Certificate of Compliance may be issued even though the vehicle listed on the VIR was not the vehicle or other data source (e.g., simulator) from which the computer data was received.

17. A technician might clean plug a car when the car to be tested is not available for convenient testing, is coming from salvage, is stolen, or cannot be repaired. The customer may ask the technician to clean plug a vehicle, and will pay, typically, from \$100 to \$300 for testing resulting in a Certificate of Compliance. The customary charge for a smog check typically ranges from \$35 to \$80. In some instances, a vehicle owner who doubts the vehicle will pass a smog test may take unlawful actions, without the smog technician's knowledge, to ensure the vehicle passes the test. Such actions include installing a different on-board computer to be connected to the DAD at the smog test station or installing a different computer circuit in the vehicle's on-board computer.

The Bureau Inspection

18. Nicholas H. Magaña is a Program Representative II specialist at the Bureau. He reviewed data in the Bureau's VID, and specifically data of smog tests performed by respondent Rosales at respondent Station, because he saw some questionable entries from respondent Station in the VID. Mr. Magaña's investigation revealed anomalies in information about the smog inspections respondent Rosales

conducted for 13 vehicles over the course of five months in 2020. (Ex. 4.) Specifically, Mr. Magaña found that 13 vehicles inspected by respondent Rosales in January, April, June, July, and August 2020 failed to transmit an eVIN and transmitted communication protocols and PID amounts that did not match the expected protocols or PID amounts for the vehicles being certified. The year, make, and model of the cars being tested varied, but the test results were suspiciously similar.

19. According to Mr. Magaña, the discrepancies he found confirmed that these vehicles, each of which received a smog certificate from respondent Station, were not properly tested and instead were clean plugged.

20. Mr. Magaña testified about Vehicles 1 and 3 as typical examples demonstrating the types of deficiencies he found in the 13 vehicles discussed in his investigative report, which he testified was accurate and which is summarized here.

VEHICLE 1, 2005 HONDA CIVIC HYBRID

21. Vehicle 1 is a 2005 Honda Civic Hybrid that respondent Rosales tested on January 19, 2020, and for which he issued smog certificate number RE227420C. The OIS Test Data for Vehicle 1 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as I914, as expected; and a PID count of 16 rather than the expected PID count of 4/18/7 or 4/19/7. Prior testing history reflects that, on January 2, 2018, Vehicle 1 transmitted an eVIN of JHMES96635S018034, a communication protocol of I914, and a PID count of 4/18/7, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported and testified that the OIS DAD was not connected to Vehicle 1 and the certificate of compliance was fraudulently issued.

VEHICLE 2, 2006 NISSAN XTERRA OFF ROAD

22. Vehicle 2 is a 2006 Nissan Xterra Off Road that respondent Rosales tested on January 26, 2020, and for which he issued smog certificate number RE381582C. The OIS Test Data for Vehicle 1 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as I914, as expected; and a PID count of 16 rather than the expected PID count of 22. Prior testing history reflects that, on February 14, 2018, Vehicle 2 transmitted an eVIN of 5N1AN08U16C518604, a communication protocol of I914, and a PID count of 22, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 2 and the certificate of compliance was fraudulently issued.

VEHICLE 3, 2007 HONDA PILOT EXL

23. Vehicle 3 is a 2007 Honda Pilot EXL that respondent Rosales tested on January 26, 2020, and for which he issued smog certificate number RE381586C. The OIS Test Data for Vehicle 3 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as I914, as expected; and a PID count of 16 rather than the expected PID count of 24. Prior testing history reflects that, on December 21, 2019, one month earlier, Mr. Rosales tested Vehicle 3, which transmitted an eVIN of 2HKYF18787H514197, a communication protocol of I914, and a PID count of 24, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. On that occasion, Vehicle 3 did not pass the smog test; Mr. Rosales found the engine light was still illuminated after the engine was running, producing a fault code. Mr. Magaña reported and testified that, on January 26, 2020, the OIS DAD was not connected to Vehicle 3 and the certificate of compliance was fraudulently issued.

VEHICLE 4, 2004 FORD ECONOLINE E350 SUPER DUTY VAN

24. Vehicle 4 is a 2004 Ford Econoline E350 Super Duty Van that respondent Rosales tested on April 3, 2020, and for which he issued smog certificate number RG837589C. The OIS Test Data for Vehicle 4 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as JVPW, rather than the expected JPWM; and a PID count of 15 rather than the expected PID count of 22 or 23. Prior testing history reflects that, on April 3, 2018, Vehicle 4 transmitted an eVIN of 1FTSS34L04HB36743, a communication protocol of JPWM, and a PID count of 22, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 4 and the certificate of compliance was fraudulently issued.

VEHICLE 5, 2006 HONDA ACCORD EX

25. Vehicle 5 is a 2006 Honda Accord EX that respondent Rosales tested on June 14, 2020, and for which he issued smog certificate number RK675838C. The OIS Test Data for Vehicle 5 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as I914, as expected; and a PID count of 16 rather than the expected PID count of 21. Prior testing history reflects that, on January 4, 2018, Vehicle 5 transmitted an eVIN of 1HGCM56776A073910, a communication protocol of I914, and a PID count of 21, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 5 and the certificate of compliance was fraudulently issued.

VEHICLE 6, 2004 FORD EXPEDITION XLT

26. Vehicle 6 is a 2004 Ford Expedition XLT that respondent Rosales tested on June 14, 2020, and for which he issued smog certificate number RK675842C. The OIS Test Data for Vehicle 6 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as JVPW, rather than the expected JPWM; and a PID count of 15 rather than the expected PID count of 22. Prior testing history reflects that, on June 2, 2018, Vehicle 6 transmitted an eVIN of 1FMFU15L24LA27031, a communication protocol of JPWM, and a PID count of 22, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 6 and the certificate of compliance was fraudulently issued.

VEHICLE 7, 2005 TOYOTA CAMRY LE

27. Vehicle 7 is a 2005 Toyota Camry LE that respondent Rosales tested on July 5, 2020, and for which he issued smog certificate number RM318641C. The OIS Test Data for Vehicle 7 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as I914, as expected; and a PID count of 16 rather than the expected PID count of 17 or 18. Prior testing history reflects that, on May 16, 2018, Vehicle 7 transmitted an eVIN of 4T1BE32K45U033007, a communication protocol of I914, and a PID count of 18, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 7 and the certificate of compliance was fraudulently issued.

VEHICLE 8, 2006 HONDA ACCORD LX

28. Vehicle 8 is a 2006 Honda Accord LX that respondent Rosales tested on July 5, 2020, and for which he issued smog certificate number RM318642C. The OIS Test Data for Vehicle 8 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as I914, as expected; and a PID count of 16 rather than the expected PID count of 21. Prior testing history reflects that, on November 13, 2017, Vehicle 8 transmitted an eVIN of 1HGCM56476A066462, a communication protocol of I914, and a PID count of 21, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 8 and the certificate of compliance was fraudulently issued.

VEHICLE 9, 2004 GMC SIERRA K2500 HEAVY DUTY

29. Vehicle 9 is a 2004 GMC Sierra K2500 Heavy Duty that respondent Rosales tested on August 2, 2020, and for which he issued smog certificate number RO053780C. The OIS Test Data for Vehicle 9 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as JVPW, as expected; and a PID count of 15 rather than the expected PID count of 12/2. Prior testing history reflects that, on April 5, 2019, Vehicle 9 transmitted an eVIN of 1GTHK23204F227505, a communication protocol of JVPW, and a PID count of 12/2, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 9 and the certificate of compliance was fraudulently issued.

VEHICLE 10, 2005 BMW 325 CI SULEV

30. Vehicle 10 is a 2005 BMW 325 CI SULEV that respondent Rosales tested on August 9, 2020, and for which he issued smog certificate number R0235287C. The OIS Test Data for Vehicle 10 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as I914, as expected; and a PID count of 16 rather than the expected PID count of 22/1 or 22/8. Prior testing history reflects that, on January 2, 2018, Vehicle 10 transmitted an eVIN of WBABV13425JT23558, a communication protocol of I914, and a PID count of 22/8, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 10 and the certificate of compliance was fraudulently issued.

VEHICLE 11, 2006 DODGE CARAVAN SXT

31. Vehicle 11 is a 2006 Dodge Caravan SXT that respondent Rosales tested on August 23, 2020, and for which he issued smog certificate number RO732911C. The OIS Test Data for Vehicle 11 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as JVPW, as expected; and a PID count of 15 rather than the expected PID count of 17/3 or 18/3. Prior testing history reflects that, on August 14, 2018, Vehicle 11 transmitted an eVIN of 1D4GP45RX6B629127, a communication protocol of JVPW, and a PID count of 18/3, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 11 and the certificate of compliance was fraudulently issued.

VEHICLE 12, 2001 GMC YUKON XL C1500

32. Vehicle 12 is a 2001 GMC Yukon XL C1500 that respondent Rosales tested on August 30, 2020, and for which he issued smog certificate number RO896325C. The OIS Test Data for Vehicle 12 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as JVPW, as expected; and a PID count of 16 rather than the expected PID count of 22. Prior testing history reflects that, on May 22, 2019, Vehicle 12 transmitted an eVIN of 3GKEC16TX1G177449, a communication protocol of JVPW, and a PID count of 22, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 12 and the certificate of compliance was fraudulently issued.

VEHICLE 13, 2003 JAGUAR S-TYPE

33. Vehicle 13 is a 2003 Jaguar S-Type that respondent Rosales tested on August 30, 2020, and for which he issued smog certificate number RO896332C. The OIS Test Data for Vehicle 13 shows the eVIN was not transmitted, though similar vehicles transmit the correct eVIN; the communication protocol was transmitted as I914, as expected; and a PID count of 16 rather than the expected PID count of 25. Mr. Magaña did not report any prior testing history for Vehicle 13. Mr. Magaña reported that the OIS DAD was not connected to Vehicle 13 and the certificate of compliance was fraudulently issued.

ADDITIONAL FINDINGS BASED ON INVESTIGATOR'S REPORT AND TESTIMONY

34. Based on Mr. Magaña's report and testimony, complainant established that Vehicles 1 through 13 were clean plugged, either by connecting a vehicle other

than the one being tested to respondent Station's computer or by using a simulator or other device.

35. Mr. Magaña acknowledged that neither respondent Rosales nor the Station had access to the information transmitted from the vehicles to the VID during testing, and they would have learned whether the vehicle passed the functional plug in portion of the test only when, at the end of the test, the OIS analyzer screen queried the technician whether to issue a Certificate of Compliance.

36. Complainant did not establish that respondents knowingly or intentionally entered false information regarding the tested vehicle or intended to deceive the Bureau or the Department by their actions. Complainant presented no evidence that respondents benefited financially from the clean plugging. Mr. Magaña did not visit respondent Station to see whether it had clean plugging equipment, such as a simulator. He did not interview the respondents. He testified he had "no idea" whether respondents were paid \$100 to \$300, the typical cost of clean plugging, for any of the 13 vehicles.

37. Complainant did not establish that the 13 separate unrelated instances of clean plugging in January, April, and June through August 2020 constituted a pattern of intentional wrongdoing by respondents. No prior citations were issued to any respondent, and there was no prior data suggestive of clean plugging occurring at respondent Station. The Bureau has never disciplined the license of any of the named respondents.

38. Complainant did not establish that respondent Tran tested any of the 13 vehicles or that Smog Check Inspector license EO 639108 issued to respondent Tran was in any way implicated in the issuing of certificates to any of those 13 vehicles.

39. Mr. Magaña did not know the source of the false data submitted during the testing of the 13 vehicles. He concluded, however, that there were no more than two different sources for the data, and those sources were not the tested vehicles. He believes that a good smog check technician should be able to ascertain whether a DLC connector has been replaced by the vehicle owner because the wires and pins in the component may look unusual. He also believes that, if the vehicles had simulators installed, the technician should be alerted by the sound the vehicles made when running and by the odor of their exhaust.

40. Mr. Magaña concluded that respondent Rosales did not inspect the 13 vehicles in a manner consistent with applicable laws and regulations and with the smog check manual. As for Station, shop owners must ensure that their smog check inspectors comply with the law and with the manual. The shop owner owns the Certificates of Compliance, and both the owner's name and the inspector's name appear on the certificates.

41. Mr. Magaña explained that the smog check program is important because California has had some of the worst air pollution problems in the country and motor vehicles are a significant source of that pollution. Smog checks identify and certify those vehicles operating properly and identify those that are out of compliance, requiring the owner to bring them into compliance or retire them. This testimony was persuasive.

Respondents' Evidence

42. Respondent Rosales testified openly and candidly. He is a part-time mechanic and smog technician, and a full-time student at California State University, Los Angeles, where he studies civil engineering. He transferred there from Los Angeles

Trade Tech with an Associate of Arts degree he obtained in 2016, having studied general education and diesel technology. In 2017, when Mr. Rosales decided to study civil engineering, he could not find a job for a part-time diesel mechanic. Instead, he trained for just under a year at Abraham Friedman Occupational Center to become a smog check technician and smog check repair technician. To obtain his inspector's license, Mr. Rosales completed over 80 hours of training; he also completed six months of coursework to become a technician. He took and passed both licensing exams.

43. Respondent Rosales obtained his licenses in 2018 and got a job at the Station. He first met Mr. Tran while working at another repair station, not doing smog-related work, around early 2018. Mr. Rosales asked Mr. Tran if he was hiring. Mr. Rosales had just recently acquired his licenses and had no experience, so Mr. Tran was hesitant at first to hire him to work at a STAR station, but he did hire Mr. Rosales, in April 2018. Mr. Rosales is still employed at the Station. When he first started, Mr. Rosales worked only Tuesdays and Thursdays because he had class the other days. Last year Mr. Rosales worked Saturdays and Sundays because of his school schedule; all but one of the smog checks relevant to this action were performed on Sundays. Mr. Rosales now works only Fridays and Saturdays, also because of his school schedule.

44. Respondent Rosales denied intentionally clean plugging any vehicle. He never used a simulator or a surrogate vehicle to fraudulently pass a smog inspection at Station. Respondent Rosales confirmed Mr. Magaña's testimony (see Factual Finding 18) that the technician performing a functional test has no access to information about whether the vehicle is transmitting the correct eVIN, protocol, or PID.

45. Mr. Rosales never demanded or accepted extra money to cheat on a smog test and he always refused anyone who asked him to do so. People have offered

him extra money, sometimes on a daily basis, to pass their vehicle as a favor. Mr. Rosales testified he has asked them to leave the premises, for which he has received negative Yelp and Google reviews. He offered in evidence invoices for each of the 13 vehicles showing he had charged \$45 for the inspections, a fee that increased to \$50 last summer as a cost of living adjustment. He testified he never accepted more for a test than was reflected on the invoice. The invoices also confirm Mr. Rosales's testimony that the total charge for a re-test within 90 days after failure was \$10.

46. Respondent Rosales tried to locate and speak with every customer whose vehicles were the subject of Mr. Magaña's inspection, to try to learn whether and how bad data was transmitted during the smog check. He knocked on doors, placed calls, and left messages. Those few customers or their relatives whom respondent Rosales was actually able to speak with, perhaps three or four customers, told him their car was stolen, or the catalytic converter was stolen and the insurance company "totaled" the car.

47. Addressing the implication of Mr. Magaña's testimony about the similarity of the test results for the 13 vehicles, to the effect that it is highly unlikely that 13 different customers would use the same one or two simulators, Mr. Rosales noted the Station is one of the only STAR stations in Hawthorne, so several repair shop owners send their customers to the Station for testing. He speculated that one or more of those shops might be the source of the substitute data.

48. Mr. Rosales visually inspects sensors, wiring, and computers. There are about 50 sensors and over 100 cables, as well as two or three computer modules. Most of these sensors, cables, and modules related to emissions components are accessible for visual inspection, but the technician cannot always see the wires behind the vehicle's DLC connector because of its placement in the passenger compartment

below the dashboard. The technician is not permitted to remove parts from the vehicle during the visual inspection at a test-only station. The inspector and repair technician's manuals do not instruct the technician to check the DLC connector's cables or pins, something Mr. Magaña suggested Mr. Rosales ought to have done.

49. Mr. Rosales has modified his inspection procedures in response to the Accusation. In certain instances, Mr. Rosales agreed, the technician can detect an improper DLC and take appropriate action. Earlier this year, for example, in April 2021, Mr. Rosales discovered in a Honda Accord extra wires hanging next to the DLC connector. It was obvious, he testified, the wires were just hanging loose, and a thick cable connected to the DLC connector. Mr. Rosales immediately stopped the smog check and "kicked the customer out." Mr. Rosales had already received service of the Accusation in this matter, and did not want anyone else "bringing me into this type of mess." Mr. Rosales attributes to the Accusation his current practice of more closely checking DLCs for loose connectors and other, visible, discrepancies. He thinks he could benefit from additional BAR training regarding conducting proper smog check inspections. He would be willing to attend class as a condition of keeping his license, and is interested in doing so to improve his skills.

50. Respondent Rosales's licenses are very important to him. Working on weekends is the only way he can financially sustain himself, his wife, and his three children. His wife also works part-time outside the home. After finishing civil engineering school, Mr. Rosales plans to work for a civil engineering firm. California requires that civil engineers be licensed, and Mr. Rosales is concerned that, if he is found to have committed fraud in this case, it may result in an inability to get licensed as a civil engineer. He testified he would never jeopardize his future as a civil engineer,

which he has been working toward for 10 years, just for some extra money to be obtained by clean plugging.

51. Respondent Tran arrived in this country in 2014. He has owned the Station, and has been a licensed smog check inspector, since 2016. He has never received a citation or had his license disciplined before this case.

52. When Mr. Tran received the Accusation, he did not believe, and still does not believe, Mr. Rosales capable of performing fraudulent smog check inspections. Mr. Tran has worked with Mr. Rosales for a while, and he trusts him. He occasionally visits the shop when respondent Rosales is working and has never seen him use a simulator device to clean plug a vehicle. He has continued to employ Mr. Rosales because Mr. Rosales has only been accused; he has not been found to have committed fraud.

53. Mr. Tran has now installed a camera system in the shop so he can monitor the work performed there. The evidence did not establish that, had Mr. Tran been present when respondent Rosales inspected the 13 vehicles, he would have been able to detect any violations, because the evidence did not establish that respondent Rosales used a simulator or substitute vehicle or otherwise attempted to engage in fraud.

54. As a condition of keeping the Station licenses, Mr. Tran would agree to BAR visiting at any time to review invoices and observe smog check inspections. He would also share video camera footage with BAR. Mr. Tran is confident in his ability to ensure that only legitimate smog check inspections are performed at the shop.

55. Mr. Tran has no sources of income other than the Station. He is married; his partner works outside the home, in Irvine. They share their earnings and financial responsibilities.

Costs of Investigation and Enforcement

56. Under Business and Professions Code section 125.3, complainant requested costs of investigation in the amount of \$1,903.50 and costs of enforcement in the amount of \$10,266.25, for a total of \$12,169.75. This amount consists of costs incurred by Bureau investigators and legal fees of the Office of the Attorney General for which the Bureau has been, or will be, billed. At hearing, complainant introduced documentation to support its investigation and prosecution costs. (Ex. 3.) Those costs are deemed reasonable. (See, however, Legal Conclusions 28-30, *infra*.)

57. Respondent Rosales's sole source of income is his position at the Station. He is also a full-time student and, along with his wife's part-time income, supports a family. He testified he would be able to pay costs in accordance with a reasonable payment plan. Respondent Tran's sole source of income is the Station.

LEGAL CONCLUSIONS

Applicable Law

1. The Bureau's highest priority in exercising its licensing, regulatory, and disciplinary functions is protection of the public. (Bus. & Prof. Code, § 9880.3.)

2. The Clean Air Act, 42 U.S.C. § 7401, et seq., provides air quality standards for the nation and requires individual state compliance. (42 U.S.C. §§ 7410, 7413.) To control and eliminate air pollutants, the California Legislature established uniform procedures for compliance with standards which control or eliminate pollution. (Health & Saf. Code, § 43000, subd. (c).) The Bureau must adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel

specifications for the control of air contaminants and sources of air pollution. (Health & Saf. Code, § 43013, subd. (a).) As of January 1, 2006, the Bureau has been charged with implementing regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions. (Health & Saf. Code, § 43018.5, subd. (a).)

3. When an agency alleges licensee misconduct, as here, complainant has the burden of proving the allegations of the Accusation by a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916–917.)

4. The expiration of a valid registration or license does not deprive the Bureau of jurisdiction to proceed with any investigation or disciplinary proceeding against an automotive repair dealer or any other licensee. (Health & Saf. Code, § 44072.6; Bus. & Prof. Code, § 9884.13.)

5. Business and Professions Code section 9884.7, subdivision (a), authorizes The Director of Consumer Affairs (Director) to discipline the registration of an automotive repair dealer if the automotive repair dealer cannot show there was a bona fide error, and any of the following occur: the dealer or any employee makes or authorizes any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading (subd. (a)(1)); conducts an act that constitutes fraud (subd. (a)(4)); or fails to materially comply with the Program or its regulations (subd. (a)(6)).

6. Neither the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.), nor the regulations promulgated under it, define “bona fide error.” A bona fide error is defined as a mistake that is unintentional, inadvertent, and in good faith. (Black’s Law Dict. (5th ed. 1979) p. 161, col. 1.) Good faith is defined as “that state of mind denoting

honesty of purpose, freedom from intention to defraud, and . . . being faithful to one's duty or obligation." (*Id.* at p. 624, col. 1; *Merrill v. Department of Motor Vehicles* (1969) 71 Cal.2d 907, 920–921.)

7. The Department's Director (Director) may discipline a license if the license holder violates statutory provisions of the Motor Vehicle Inspection Program, which establishes inspections standards and test procedures. (Health & Saf. Code, § 44072.2, subd. (a).) Violations of those statutory provisions include failing to ensure that the emission control tests are performed in accordance with Bureau procedures (Health & Saf. Code, § 44012); issuing electronic smog certificates of compliance without ensuring that the vehicles were properly tested and inspected (Health & Saf. Code, § 44015, subd. (b)); and making false entries for the electronic smog certificates of compliance (Health & Saf. Code, § 44059).

8. The Director may discipline a license if the license holder fails to comply with the following regulations: falsely or fraudulently issuing electronic certificates of compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); improperly issuing electronic certificates of compliance when the vehicles had not been properly inspected in accordance with California Code of Regulations, title 16, section 3340.42 (Cal. Code Regs., tit. 16, § 3340.35, subd. (c)); and failing to conduct the required smog tests and inspections in accordance with the Bureau specifications (Cal. Code Regs., tit. 16, § 3340.42). (Health & Saf. Code, § 44072.2, subd. (c).)

9. The Director may discipline a license if the license holder "commits any act involving dishonesty, fraud, or deceit whereby another is injured." (Health & Saf. Code, § 44072.2, subd. (d).) The statute does not define "fraud."

10. The Director may revoke a license for fraudulently certifying or participating in the fraudulent certification or inspection of a vehicle. The statute defines a fraudulent inspection to include the "[i]ntentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter." (Health & Saf. Code, § 44072.10, subd. (c).) The Director may revoke 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 the Automotive Repair Act or applicable regulations. (Bus. & Prof. Code, § 9884.7, subd. (c).)

11. When the Director revokes a license under the Motor Vehicle Inspection Program, the Director may revoke any additional license in the name of the licensee issued under the Program. (Health & Saf. Code, § 44072.8.)

Causes for Discipline

CAUSES FOR DISCIPLINE 1 THROUGH 5, AGAINST STATION

12. Cause exists to discipline Station's registration under Business and Professions Code section 9884.7, subdivision (a)(1), in that Station made untrue or misleading statements when it certified that vehicles 1 through 13 were in compliance with applicable laws and regulations as required by Health and Safety Code section 44012, as set forth at Factual Findings 6 through 41.

13. Cause does not exist to discipline Station's registration under Business and Professions Code section 9884.7, subdivision (a)(4), in that the evidence did not establish Station committed fraudulent acts by certifying that vehicles 1 through 13 were in compliance with applicable laws and regulations without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby

depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program, as set forth at Factual Findings 6 through 55.

14. Cause exists to discipline Station's Smog Check, Test Only, Station license under Health and Safety Code section 44072.2, subdivision (a), in that Station failed to ensure that emission control tests were performed on vehicles 1 through 13 in accordance with Bureau procedures, as required under Health and Safety Code section 44012, and in that Station issued electronic smog certificates of compliance for vehicles 1 through 13 without ensuring the vehicles were properly tested and inspected, as required under Health and Safety Code section 44015, as set forth at Factual Findings 6 through 41.

15. Cause does not exist to discipline Station's Smog Check, Test Only, Station license under Health and Safety Code section 44072.2, subdivision (a), in that the evidence did not establish that Station willfully made false entries for the electronic smog certificates of compliance for vehicles 1 through 13 by certifying that those vehicles had been inspected as required when, in fact, they had not, in violation of Health and Safety Code section 44059, as set forth at Factual Findings 6 through 55.

16. Cause exists to discipline Station's Smog Check, Test Only, Station license under Health and Safety Code section 44072.2, subdivision (c), in that Station failed to comply with California Code of Regulations, title 16, section 3340.35, subdivision (c), by issuing certificates of compliance to vehicles 1 through 13, even though those vehicles had not been inspected in accordance with section 3340.42, as set forth at Factual Findings 6 through 41.

17. Cause does not exist to discipline Station's Smog Check, Test Only, Station license under Health and Safety Code section 44072.2, subdivision (d), in that

the evidence does not demonstrate Station committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic smog certificates of compliance for vehicles 1 through 13 without performing bona fide inspections of the emission control devices and systems on the vehicles, as set forth at Factual Findings 6 through 55. Complainant failed to establish by a preponderance of evidence that Station committed acts of fraud by clean plugging vehicles. Neither the Automotive Repair Act nor the regulations promulgated under it include a definition of "fraud." In general, fraud will be found when an individual "intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him." (*Wayne v. Bureau of Private Investigators and Adjusters, Department of Professional and Vocational Standards* (1962) 201 Cal.App.2d 427, 438; see Civ. Code, § 1572.) Complainant failed to establish that Station intentionally transmitted false data for the purpose of deceiving the Bureau or the DMV.

CAUSES FOR DISCIPLINE 6 THROUGH 9, AGAINST RESPONDENT ROSALES

18. Cause exists to discipline respondent Rosales's inspector license and repair technician license under Health and Safety Code section 44072.2, subdivision (a), in that respondent Rosales failed to comply with Health and Safety Code section 44072.2, subdivision (a), by failing to perform emission control tests on vehicles 1 through 13 in accordance with Bureau procedures, in violation of Health and Safety Code section 44012, as set forth at Factual Findings 6 through 41.

19. Cause exists to discipline respondent Rosales's inspector license and repair technician license under Health and Safety Code section 44072.2, subdivision (c), in that respondent Rosales failed to comply with California Code of Regulations, title 16, section 3340.30, subdivision (a), by failing to inspect vehicles 1 through 13 in

accordance with Health and Safety Code section 44012, and by entering into the emissions inspection system vehicle identification information or emission control system identification data for vehicles other than those being tested, in violation of California Code of Regulations, title 16, section 3340.41, subdivision (c), though he did not knowingly enter false information about those vehicles, as set forth at Factual Findings 6 through 41.

20. Cause exists to discipline respondent Rosales's inspector license and repair technician license under Health and Safety Code section 44072.2, subdivision (a), in that respondent Rosales failed to ensure that emission control tests were performed on vehicles 1 through 13 in accordance with Bureau procedures, as required under Health and Safety Code section 44012, and failed to perform tests of emission control devices and systems for vehicles 1 through 13 in accordance with Health and Safety Code section 44012, as set forth at Factual Findings 6 through 41. (b) Cause does not exist to discipline respondent Rosales's inspector license and repair technician license under Health and Safety Code section 44072.2, subdivision (a), in that the evidence did not establish that respondent Rosales willfully made false entries for the electronic smog certificates of compliance for vehicles 1 through 13 by certifying that those vehicles had been inspected as required when, in fact, they had not, in violation of Health and Safety Code section 44059, as set forth at Factual Findings 6 through 55.

21. Cause does not exist to discipline respondent Rosales's inspector license and repair technician license under Health and Safety Code section 44072.2, subdivision (d), in that the evidence does not demonstrate respondent Rosales committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic smog certificates of compliance for vehicles 1 through 13 without

performing bona fide inspections of the emission control devices and systems on the vehicles, as set forth at Factual Findings 6 through 55.

CAUSE FOR DISCIPLINE 10, AGAINST RESPONDENT TRAN

22. Cause does not exist to discipline respondent Tran's inspector license and repair technician license under Health and Safety Code section 44072.2, subdivision (d), in that there was no evidence respondent Tran used those licenses to issue electronic smog certificates of compliance to any vehicle, as set forth at Factual Finding 38.

Disposition

23. Having found cause for discipline on half of the causes for discipline set forth in the Accusation, it is necessary to determine the appropriate level of discipline. The Bureau's Guidelines for Disciplinary Orders and Terms of Probation (rev. March 2016 (Guidelines)), issued under California Code of Regulations, title 16, section 3395.4, identify factors to be considered in determining the appropriate level of discipline as well as the recommended discipline for the various types of misconduct established in this case.

24. The Guidelines identify 15 aggravating and 12 mitigating factors to be considered in determining discipline. None of the listed aggravating factors applies here, but several of the mitigation factors do. Respondents have never been disciplined, warned, or cited by the Bureau. There was no evidence that the clean plugging was a pattern of practice or that respondents engaged in any fraudulent or grossly negligent conduct. There was no evidence of loss to the Station's consumers; the only evidence on this point establishes that customers were charged usual and customary fees for smog checks. Both Station and respondent Rosales have taken

substantial measures to correct their practices. Respondent Rosales is more diligent about identifying improper DLC's during visual inspection and will take courses to help him comply with all inspection requirements. Station has installed a video feed to allow Mr. Tran to better observe smog checks as they are performed. (Factual Findings 6 through 55.)

25. The Guidelines set forth ranges of discipline for specific statutory and regulatory violations. Under appropriate circumstances, a decision after an administrative hearing may include a stay of execution and the condition that respondent comply with specified terms and conditions of probation. (Gov. Code, § 11519, subds. (a) & (b).)

26. The statutes relating to licensing of professions are designed to protect the public from dishonest, untruthful, and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) In issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid*; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) License disciplinary proceedings are not intended to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.)

27. The clean plugging established here warrants less than an outright revocation of respondents' registration and licenses. Although complainant proved that respondents clean plugged, complainant failed to prove respondents' conduct was intended to defraud the Bureau and respondents satisfied many of the mitigating factors identified in the Guidelines. The 13 instances of clean plugging do not reflect a pattern of wrongful or deceptive misconduct. They occurred over the course of five nonconsecutive months in 2019. Respondent Rosales failed to perform inspections in

accordance with regulations for visual inspection for wiring, but he was inexperienced, his explanations of what occurred are plausible, complainant did not establish any intent to defraud or deceive, and respondent Rosales has no disciplinary record. The discipline contained in the Order below, including appropriate supervisory measures, will ensure public protection, as well as facilitate the rehabilitation of respondents without being unduly punitive or burdensome.

Costs

28. Business and Professions Code section 125.3 provides that a licensee found to have committed a violation of an applicable licensing act shall pay the reasonable costs of the investigation and enforcement of the case. As set forth in Factual Finding 56, that amount is \$12,169.75, consisting of \$10,266.25 of enforcement costs and \$1,903.50 of investigation costs.

29. The Bureau must evaluate several factors to ensure that the cost recovery provision does not deter individuals from exercising their right to a hearing.

(Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, 45)

(Zuckerman). The Bureau must not assess full costs where it would unfairly penalize a respondent who has committed some misconduct but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Bureau must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the Bureau must consider a respondent's ability to pay; and, the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct.

30. Applying the *Zuckerman* criteria, respondents Station, Rosales, and Tran each had a good faith belief in the merits of their respective positions. Only half the alleged causes for discipline against respondents Station and Rosales were sustained; the one cause for discipline against respondent Tran was not. Costs of enforcement, therefore, are reduced by 50 percent, from \$10,266.25 to \$5,133.13. Costs of investigation are \$1,903.50. Total costs of investigation and enforcement are \$7,036.63. Respondents Station and Rosales are jointly and severally liable for costs in that amount. Those respondents shall be permitted to pay costs according to a reasonable payment plan.

ORDER

The Accusation against respondent Trung D. Tran, Smog Check Inspector license, number EO 639108, is dismissed.

It is hereby ordered that the following registrations and licenses are revoked: (a) Automotive Repair Dealer registration, number ARD 284163, and any other ARD registration issued to respondent Trung D. Tran—Owner, doing business as T and D Smog Test; (b) Smog Check, Test Only, Station license, number TC 284163, and any other license to operate a smog check station issued to respondent Trung D. Tran—Owner, doing business as T and D Smog Test; (c) Smog Check Inspector license issued to respondent Frank Davis Rosales, number EO640847; and Smog Check Repair Technician license issued to respondent Frank Davis Rosales, number EI 640847.

The revocations are stayed, however, and respondent Trung D. Tran—Owner, doing business as T and D Smog Test, and respondent Frank Davis Rosales are placed on probation for three years on the following terms and conditions.

1. Actual Suspension (Respondent Rosales only)

Smog Check Inspector license number EO 640847 and Smog Check Repair Technician license number EI 640847, issued to respondent Rosales, are suspended for three consecutive days beginning on the effective date of the Decision and Order.

2. Obey All Laws

During the period of probation, respondents Station and Rosales shall comply with all federal and state statutes, regulations, and rules governing all BAR registrations and licenses held by those respondents.

3. Quarterly Reporting

During the period of probation, respondents Station and Rosales 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

Respondents Station and Rosales 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 under Business and Professions Code section 9884.6.

//

//

5. Access to Examine Vehicles and Records

Respondents Station and Rosales 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. Respondents Station and Rosales shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

6. Tolling of Probation

If, during probation, respondent Trung D. Tran, Station owner, or respondent Rosales, leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, those respondents 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 respondents Trung D. Tran, owner, and respondent Rosales obey all laws, shall be held in abeyance during any period of time of 30 days or more in which either of those respondents are not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which either of those respondents 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 Station or respondent Rosales 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 a 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

Respondents Station and Rosales shall, at all times while on probation, maintain current and active registrations and licenses with BAR, including any period during which suspension or probation is tolled. If a respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by that respondent within 30 days of that date. If a respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal that 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 or license during the period of probation shall also constitute a violation of probation.

9. Cost Recovery

Respondents Trung D. Tran—Owner, doing business as T and D Smog Test, and Frank Davis Rosales shall jointly and severally pay the Bureau of Automotive Repair \$7,036.63 for the reasonable costs of the investigation and enforcement of case No. 79/20-10755. Respondents shall make the payment in equal monthly amounts, beginning 30 days after the effective date of this decision, with full payment

completed no later than six months before probation terminates. Respondents Station and Rosales shall make payments 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. 79/20-10755. 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, the affected registration and licenses of respondents Station and Rosales will be fully restored or issued without restriction, if those respondents meet all current requirements for registration or licensure and have 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 respondents Station or Rosales ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, the 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 the 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.

A respondent may not petition the Director for reinstatement of the surrendered registration 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 a respondent applies to BAR for a registration or license at any time after that date, the 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 (Applicable to Respondent Rosales only)

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

//

//

//

//

13. Notification to Employer (Applicable to Respondent Rosales only)

During the period of probation, when performing services that fall within the scope of his license, respondent Rosales shall provide each of his future employers a copy of this decision and the underlying Accusation before commencing employment. Respondent Rosales shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

DATE: 12/09/2021


Howard W. Cohen (Dec 9, 2021 08:29 PST)
HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings