

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

In the Matter of the Accusation Against:

ALFREDO GARCIA, dba 1 STOP SMOG CHECK

3318 Venice Blvd.

Los Angeles, CA 90019

Automotive Repair Dealer Registration No. ARD 295100

Smog Check Test Only Station License No. TC 295100

and

JOSEPH TOMMY DIAZ III

4427 W. 135th St. Apt. #4

Hawthorne, CA 90250

Smog Check Inspector License No. EO 641322

Respondents.

Case No. 79/21-13046

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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 01 2024.

IT IS SO ORDERED this 20 day of December, 2023.



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

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

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Automotive Repair Dealer Registration No. ARD 295100

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And

JOSEPH TOMMY DIAZ III

Smog Check Inspector License No. EO 641322

Respondents.

Agency Case No. 79/21-13046

OAH No. 2023020351

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on November 9, 2023 by teleconference.

Patrick Dorais (Complainant) was represented by Sheronda Edwards, Deputy Attorney General.

Respondents Alfredo Garcia dba 1 Stop Smog Check (Respondent Garcia) and Joseph Tommy Diaz (Respondent Diaz) (collectively Respondents) were represented by Andrew Smyth, Attorney at Law.

Respondents were not present.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 9, 2023.

FACTUAL FINDINGS

1. Complaint filed and served the Accusation in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs (BAR or Bureau). Respondents filed timely Notices of Defense. All jurisdictional requirements have been met.

2. At all relevant times, Respondent Garcia held Automotive Repair Dealer Registration Number ARD 295100 and Smog Check, Test Only Station License TC295100 issued to Alfredo Garcia, owner doing business as 1 Stop Smog Check. 1 Stop Smog Check was also certified as a STAR Station.

3. On August 26, 2018, the Bureau issued Smog Check Inspector License number EO 641322 to Respondent Diaz under SB 1997, the biennial Smog Check Program implemented January 1, 1990. The Smog Check Inspector License was in full force and effect at all relevant times.

4. Complainant established the truth of the allegations contained in paragraphs 23 of the Accusation which provides, in pertinent part:

On or about October 5, 2021, bureau representatives conducted video surveillance of Respondent Diaz performing Smog Check inspections throughout the day at Respondent 1 Stop Smog Check. Bureau data shows that the license of Respondent Diaz was used to perform BAR97 inspections without the vehicles being present at Respondent 1 Stop Smog Check. Eight (8) of these vehicles were fraudulently issued Smog Check Certificates of Compliance by Respondent 1 Stop Smog Check via the clean piping method.

5. It was established that the eight vehicles that were fraudulently issued electronic certificates of compliance were a 1993 BMW 3-Series, 1989 Toyota Pickup, 1999 Chevrolet K2500 Suburban, 1999 BMW 3-Series, 1982 Toyota Tercel, 1998 Oldsmobile Eighty Eight, 1991 Honda Civic and a 1997 Toyota Camry as set forth in the chart in paragraph 23 of the Accusation (with the VIN numbers as listed in the Accusation).

6. Complainant incurred investigation costs in the amount of \$2,868.88 (Exhibit 7) and prosecution costs in the form of Attorney General charges in the amount of \$10,321.25. (Ex. 22.) The total costs of \$13,190.13 are deemed reasonable.

7. Respondents did not present any evidence of mitigation, rehabilitation or financial hardship.

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LEGAL CONCLUSIONS

1. The burden of proof in a licensing disciplinary action is on the party making the charges in an accusation. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789 fn. 9.) In a case that involves an occupational license, complainant bears the burden of proving cause for discipline by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. Pursuant to Business and Professions Code sections 9884.13 and 118 and Health and Safety Code section 44072.6, the expiration a registration or license does not prevent the Bureau from disciplining the registration or license.

3. Pursuant to Business and Professions Code section 9884.7, subdivision (a) a licensee or registrant may be disciplined for "acts or omissions related to the conduct of the business of automotive repair dealer, which are done by the automotive repair dealers" including "[m]aking or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading" or "[a]ny other conduct which constitutes fraud."

4. Health and Safety Code section 44072.2 states in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the

licensee, or any partner, officer, or director thereof, does any of the following:

Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities. [¶] . . . [¶]

c. Violates any of the regulations adopted by the director pursuant to this chapter.

d. Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

f. Aids or abets unlicensed persons to evade the provisions of this chapter.

5. Health and Safety Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

6. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:

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

7. California Code of Regulations, title 16, section 3340.30, states in relevant part:

A smog check technician shall comply with the following requirements at all times while licensed. (a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

8. California Code of Regulations, title 16, sections 3340.41, 3340.42 and Health and Safety Code section 44012 prescribe the requirements of the smog check inspection process.

9. Health and Safety Code section 44072.10, subdivision (c), states in pertinent part:

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

(1) Clean piping, as defined by the department.

[¶] . . . [¶]

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

10. First Cause for Discipline: Cause exists to discipline Respondent Garcia's Automotive Repair Dealer Registration pursuant to Health and Safety Code section 9884.7, subdivision (a)(1), in that on or about October 5, 2021, Respondent Garcia made or authorized statements which he knew or in the exercise of reasonable care he should have known to be untrue or misleading, as set forth in factual findings 4 and 5, when Respondent Garcia issued electronic certificates of compliance for eight vehicles certifying that the vehicles were inspected in compliance with all laws and regulations when in fact the certifications were made using "clean piping" by using a different or substitute vehicles for portions of the smog check inspection in violation of Code section 44012.

11. Second Cause for Discipline: Cause exists to discipline Respondent Garcia's Automotive Repair Dealer Registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that on or about October 5, 2021, Respondent Garcia committed acts which constitute fraud by issuing electronic certificates of compliance for eight vehicles, as set forth in factual findings 4 and 5, without performing bona fide inspections of the emission control devices and systems of those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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12. Third Cause for Discipline: Cause exists to discipline Respondent Garcia's Smog Check's, Test Only, Station License pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on or about October 5, 2021, when Respondent Garcia failed to comply with Health and Safety Code sections 44012, 44015 and 44059 when 1 Stop Smog Check Test Only issued electronic certificates of compliance for eight vehicles without ensuring the proper emission control tests were performed, the vehicles were properly tested and inspected and willfully made false entries for the electronic certificates of compliance by certifying the eight vehicles were properly inspected, when they had not been, by reason of Factual Findings 4 and 5.

13. Fourth Cause for Discipline: Cause exists to discipline Respondent Garcia's Smog Check, Test Only, Station License pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about October 5, 2021, Respondent Garcia failed to comply with California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42 when 1 Stop Smog Check falsely and fraudulently issued electronic certificates of compliance for eight vehicles without performing bona fide inspections of the emission control devices and systems as required by Health and Safety Code section 44012, and issued electronic certificates of compliance without inspecting the vehicles, in accordance the Bureau's specifications as required by section Health and Safety Code 3340.42, by reasons of Factual Findings 4 and 5.

14. Fifth Cause for Discipline: Cause exists to discipline Respondent Garcia's Smog Check, Test Only, Station License pursuant to Health and Safety Code sections 44072.2, subdivision (d) and 44072.10, subdivision (c), in that on or about October 5, 2021, Respondent Garcia committed acts involving dishonesty, fraud and deceit whereby another was injured by issuing electronic certificates of compliance for eight

vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program, by reason of Factual Findings 4 and 5.

15. Sixth Cause for Discipline: Cause exists to discipline Respondent Diaz's Smog Check Inspector license pursuant to Health and Safety Code section 44072.2, subdivision (a) because he failed to comply with Health and Safety Code section 44012 when he failed to perform emission control tests on eight vehicles in accordance with the procedures prescribed by the Bureau, by reason of Factual Findings 4 and 5.

16. Seventh Cause for Discipline: Cause exists to discipline Respondent Diaz's Smog Check Inspector license, pursuant to Health and Safety Code section 44072.2, subdivision (c), for violations of regulations pursuant to the Motor Vehicle Inspection Program, specifically California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.30, subdivision (a), and 3340.42 because Respondent Diaz falsely and fraudulently issued electronic certificates of compliance without performing bona fide inspections of the emission control devices on eight vehicles, failed to inspect and test those vehicles as required by Health and Safety Code section 44012 and in accordance with the Bureau's specifications, by reason of Factual Findings 4 and 5.

17. Eighth Cause for Discipline: Cause exists to discipline Respondent Diaz's Smog Check Inspector license pursuant to Health and Safety Code sections 44072.2, subdivision (d) and 44072.10, subdivision (c), for dishonesty, fraud, and deceit whereby another was injured, in that on or about October 5, 2021, by issuing electronic certificates of compliance without performing bona fide inspections of the emission control devices on eight vehicles thereby depriving the People of the State of

California of the protection afforded by the Motor Vehicle Inspection Program, by reason of Factual Findings 4 and 5.

18. In any order issued in resolution of a disciplinary proceeding, at the request of the Bureau, the ALJ may direct the licentiate found to have committed a violation to pay a sum not to exceed the reasonable costs of investigation and enforcement. A certified copy of the actual costs, signed by the Bureau or its designated representative, is prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. (Business and Professions Code, § 125.3, subds. (a), (c); CCR, tit. 1, § 1042, subd. (b).)

19. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. Those factors include: (1) the licentiate's success in getting the charges dismissed or reduced; (2) the licentiate's subjective good faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate's financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

20. Respondents were not successful in having any of the charges dismissed, did not raise a substantial challenge to the charges, presented no evidence of financial hardship and there was no evidence that the scope of the investigation was unduly expansive in light of the misconduct. Accordingly, pursuant to Code section 125.3, the

reasonable costs of investigation and prosecution of the Accusation in the amount of \$13,190.13.

21. In the absence of any rehabilitation or mitigation, all licenses and registrations issued to Respondents by the Bureau must be revoked in the interests of ensuring the public health, safety, welfare. Given the severity of the order below, Respondents will be ordered to pay costs of investigation and prosecution as a pre-condition of application for relicensure or reinstatement.

ORDER

1. Automotive Repair Dealer Registration Number ARD 295100 issued to Alfredo Garcia dba 1 Stop Smog Check is revoked.

2. Smog Check, Test Only, Station License Number TC 295100, issued to Alfredo Garcia dba 1 Stop Smog Check is revoked.

3. Any and all licenses or registrations issued to Alfredo Garcia by the Bureau of Automotive Repair are revoked.

4. Smog Check Inspector License number EO641322 issued to Joseph Tommy Diaz III is revoked.

5. Any and all licenses or registrations issued to Joseph Tommy Diaz by the Bureau of Automotive Repair are revoked.

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6. Alfredo Garcia dba 1 Stop Smog and Joseph Tommy Diaz III are joint and severally liable for the payment of investigation and prosecution costs in the amount of \$13,190.13 as a precondition of any application for reinstatement or licensure.

DATE: **11/17/2023**

Glynda Gomez

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings