

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

**In the Matter of the Statement of Issues Against:**

**Nicholas K. Dabit, Respondent**

**Agency Case No. 79/19-18030**

**OAH No. 2020050694**

**DECISION AFTER REJECTION OF PROPOSED DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 8, 2020.

Michael Brown, Deputy Attorney General, represented complainant Patrick Dorais, Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department). Respondent Nicholas K. Dabit represented himself. Testimony and documents were received in evidence. The record closed and the matter was submitted for decision at the conclusion of the hearing.

On February 3, 2021, the Director of Consumer Affairs (Director) rejected the Proposed Decision and set the matter for a hearing on the record. The transcripts were received on or about March 10, 2021, and the parties were granted the opportunity to submit written argument on or before April 26, 2021. Both parties submitted written

arguments. After review of the entire administrative record, the Director hereby renders the final decision in this matter.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On October 28, 2019, respondent filed an application for a Smog Check Inspector license with the Bureau.
2. On December 13, 2019, the Bureau denied the application.
3. On January 6, 2020, Respondent appealed requesting a hearing.
4. On April 29, 2020, complainant, acting in an official capacity, brought the Statement of Issues.
5. All jurisdictional requirements are satisfied.

### **Basis for Denial of Licensure Application**

6. The Bureau previously issued Automotive Repair Dealer registration number ARD 256809 and Smog Check Test Only Station license number TC 256809 to respondent doing business as Nick's Smog and Smog Check Inspector license number EO. 153612 and Smog Check Repair Technician license number EI 53612 to respondent.
7. Effective October 30, 2018, pursuant to the Decision in the disciplinary action *In the Matter of the Accusation Against Nicholas K. Dabit dba Nick's Smog, Nicholas K. Dabit*, case number 79/17-1637, the Director

revoked respondent's registration, smog check station license, and inspector and technician licenses for violating Business and Professions Code section 9884.7, subdivisions (a)(1) (untrue or misleading statements, (a)(4) (fraud), and (a)(6) (failure to comply with the Automotive Repair Act or regulations adopted pursuant to it), and Health and Safety Code section 44072.2, subdivisions (a) (violations of the Motor Vehicle Inspection Program), (c) (failure to comply with regulations adopted pursuant to the Motor Vehicle Inspection Program), and (d) (dishonesty, fraud, or deceit).

8. The Director revoked respondent's registration and licenses because respondent failed to perform a proper smog check inspection on four vehicles. Respondent nonetheless issued fraudulent certificates for each of the four vehicles certifying them compliant with the Motor Vehicle Inspection Program.

### **Respondent's Testimony**

9. Respondent owned and operated Nick's Smog for 10 years, the last two years of which he performed smog check inspections on approximately three to four hundred cars each month.
10. After revocation of his registration and licenses, respondent closed the shop. He searched, without success, for employment elsewhere. "I went to a bunch of mechanic spots. They don't want someone with my record at their business." He "tried getting away from automotive." "I went to a few insurance companies. They ran background checks and I didn't hear from them." He explored employment opportunities with Domino's Pizza

to no avail. Respondent testified, "All the places I go to they look up my public record and they pretty much deny me." Respondent testified, "At this point, I'm quite desperate. I've been jobless for two years."

11. Respondent returned to Smog Tech Institute for instructions on how to perform a proper smog check inspection. In a June 26, 2020 letter, an instructor who is knowledgeable about respondent's misconduct states respondent "has completed all requirements at time of remorse, and that shows a lot of him." (Exh. B.)
12. In March and April 2020, respondent completed an eight-hour Workplace Ethics Training Class and the eCommerce course, Ethics for Everyone.
13. Currently, respondent is enrolled in business and dance classes at a junior college where he initially matriculated in 2010.
14. In a May 20, 2020 letter, respondent acknowledges and apologizes for his misconduct.

"I made some bad decisions on illegally passing vehicles under the state California law. Clean plugging is what I did and I am terribly sorry from the bottom of my heart. . . . I have been going to . . . church trying to cleanse my thoughts of all this and really just trying to find forgiveness for the actions that I have made"

(Exh. A.)

15. At the administrative hearing, respondent offered an undated To-Whom-It-May-Concern letter from his church discussing his community involvement and his remorse for his misconduct.

[Respondent] has been attending our church and involved in serving our community since June 2019. He also joined us in feeding the homeless in our community . . . . He has displayed remorse and repentance towards his actions in doing illegal smog checks. He has shown a deep desire to change and grow through his experience. He has also shown a desire for consistent growth and commitment to be a part of our community because as he stated "It helps me focus on making better decisions in my life." . . . [W]e have confidence that he will continue the path of growth and change in a positive direction.

(Exh. C.)

16. Respondent testified, "I'm actually a decent person. . . . I have learned my lesson. I would never do something like this again. I'm willing to go on probation. I'm willing to do anything to get another chance."
17. The Bureau did not contradict this testimony.

## LEGAL CONCLUSIONS

### Standard and Burden of Proof

1. The standard of proof is a preponderance of the evidence. (See *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.) Respondent bears the burden of proof. (Gov. Code, § 11504; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.] . . . [T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325, original italics.) In meeting the burden of proof by a preponderance of the evidence, respondent "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

### Applicable Statutory Provisions

3. "The department shall have the sole and exclusive authority within the state for developing and implementing the motor vehicle inspection program[.]" (Health & Saf. Code, § 44002.)
4. The director is authorized to "refuse to issue a license to any applicant for the reasons set forth in Section 44072.1." (Health & Saf. Code, § 44072.)
5. Health and Safety Code section 44072.1 provides:

The director may deny a license if the applicant . . . does any of the following: [1] . . . [1]

(b) Was previously the holder of a license issued under this chapter, which license has been revoked and never reissued or which license was suspended and the terms of the suspension have not been fulfilled.

(c) Has committed any act that, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefitted.

6. Business and Professions Code section 480, in pertinent part, provides:

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant . . . has been subject to formal discipline only if either of the following conditions are met:[1]

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of the application based on professional misconduct that would have been cause for discipline before the board for which the present

application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a comparable dismissal or expungement.

7. Health and Safety Code section 44072.9 provides:

After revocation of a license upon any of the grounds set forth in this article, the license shall not be reinstated or reissued within a period of one year after the effective date of revocation.

## **Discussion**

8. Cause exists pursuant to Health and Safety Code section 44072.1, subdivisions (b) and (c), and Business and Professions Code section 480, subdivision (a)(2), to deny respondent's application for licensure as a smog check inspector, in that within the preceding seven years the Bureau formally disciplined respondent revoking his registration and licenses, which have never been reissued, for misconduct substantially related to the qualifications, functions, or duties of a licentiate holding the license for which he has applied. (See Factual Findings 6 through 9.)
9. Cause exists pursuant to Health and Safety Code section 44072.1, subdivision (d), to deny respondent's application for licensure as a smog



check inspector, in that respondent committed acts of dishonesty, fraud, or deceit, which caused injury to members of the public. (See Factual Findings 7 and 8.)

10. Honesty and integrity are qualifications required to perform the functions and duties of a smog check inspector. The misconduct underlying the revocation of respondent's registration and licenses involved acts of dishonesty, deceit, and fraud. Respondent has taken full responsibility for his misconduct. At the administrative hearing, respondent confronted his past misconduct without any attempt at prevarication or minimization. Fully acknowledging the wrongfulness of past actions is an essential rehabilitative factor. (See e.g. *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Since the revocation of his registration and licenses, respondent has completed ethics courses relevant to performing the functions and duties of a Bureau licensee. He has received instructions on how to perform proper smog check inspections. Respondent has immersed himself in his spiritual community where he is reported to have "displayed remorse and repentance towards his actions in doing illegal smog checks." (Factual Finding 17.) Respondent's rehabilitative efforts are evident not only in his conduct, but also in his expressed state of mind. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317 and *Resner v. State Bar* (1967) 67 Cal.2d 799, 811 [state of mind is an additional important aspect of rehabilitation].) His state of mind laid bare through testimony at the administrative hearing, respondent has revealed a mature, measured understanding of the gravity of his misconduct resulting in the revocation of his registration and licenses. He

is contrite. Respondent has presented a preponderance of evidence of ongoing substantial rehabilitation.

11. The Bureau submitted written arguments claiming that insufficient time has not elapsed since the prior discipline. The Bureau states it has only been one year, however, "If Respondent had been placed on probation in the underlying case, it would have been for at least 5 years, but since he was revoked outright even more time should have to pass without any misconduct before he can be considered rehabilitated." There is no specific authority directly on point cited for this assertion, however, the Bureau does reference California Code of Regulations, title 16, section 3395, which sets forth criteria for rehabilitation. This argument is, however, is speculative given that Respondent would not have notice regarding application barriers based on what the Bureau would interpret as alternative discipline. Instead, Health and Safety Code section 44072.9 sets forth that respondent may apply for re-licensure one year after revocation.
12. An administrative disciplinary proceeding such as this is not penal in nature. It is not to inflict punishment. (See e.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) The functions of administrative disciplinary proceedings include public protection and improvement and rehabilitation of an errant licensee or applicant. (See e.g. *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 446; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772; *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d, 461,473; *Furnish v. Board of Medical Examiners* (1957) 149 Cal.App.2d 326, 331; Bus. & Prof. Code, § 9880.3.)

13. Under all the facts and circumstances of this case, a restricted smog check inspector license with terms and conditions limiting respondent to employment where he is supervised inspecting and certifying vehicles requiring smog inspection will diminish any opportunity for mischief. Such a restricted smog check inspector license achieves public protection as respondent continues with his rehabilitation.

## **ORDER**

Respondent Nicholas K. Dabit's Application for Smog Check Inspector License is granted. However, respondent's smog check inspector license is revoked, the revocation is stayed, and the license is placed on probation for three (3) years with the following terms and conditions.

### **1. 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.

### **2. 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.

### **3. 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 Bureau during the period of probation, report any financial interest which any Respondent or any partners, officers, or owners of any

Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

**9. Access to Examine Vehicles and Records**

Respondent shall provide Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide Bureau representatives unrestricted access to all records pursuant to Bureau laws and regulations.

**10. Tolling of Probation**

If, during probation, Respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Respondent shall notify the Bureau in writing within 10 calendar 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 calendar 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 time of 30 calendar 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.

### **11. 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 Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

### **12. Maintain Valid License**

Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau, 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 calendar 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.

### **13. Completion of Probation**

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

### **14. 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 Bureau 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.

Respondent may not petition the Director for reinstatement of the surrendered registration or apply for a new registration under the jurisdiction of the Bureau at any time before the date of the originally scheduled completion of probation. If Respondent applies to the Bureau for a registration or license at any time after that date, Respondent must meet all current requirements for registration and pay all outstanding fees or cost recovery owed to the Bureau and left outstanding at the time of surrender.

DATE:

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GraceArupo@DCA

Digitally signed by Rodriguez,  
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