

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

In the Matter of the Statement of Issues Against:

RENE ZAMORANO

Smog Check Inspector License Applicant

Respondent.

Case No. 77/22-14595

OAH No. 2023040474

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 September 29, 2023.

IT IS SO ORDERED this 23 day of August, 2023.



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

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

In the Matter of the Statement of Issues Against:

RENE ZAMORANO, Respondent.

Agency Case No. 77/22-14595

OAH No. 2023040474

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 31, 2023, by videoconference.

Deputy Attorney General Christine J. Lee represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

William Ferreira, Esq., represented respondent Rene Zamorano who was present.

Testimony and documents were received as evidence. The record was closed and the matter was submitted for decision on May 31, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant brought the Statement of Issues (SOI) in his official capacity. At hearing, complainant amended the SOI on page 4, line 17, and added the words "[R]espondent failed to disclose [his] conviction on Question 10(g)."

2. On September 9, 2022, the Bureau received an application for a Smog Check Inspector License from respondent. On August 31, 2022, respondent certified, under penalty of perjury, that all statements, answers, and representations in his application were truthful.

3. The Bureau denied respondent's application on October 19, 2022.

Respondent's Licensing History with the Bureau

4. On September 29, 2015, the Bureau issued Automotive Repair Dealer Registration No. ARD 281607 to respondent, doing business as Z Smog Check. The Automotive Repair Dealer Registration was revoked on February 8, 2019.

5. On October 13, 2015, the Bureau issued Smog Check Test Only Station License No. TC 281607 to respondent, doing business as Z Smog Check. The Smog Check Test Only Station License was revoked on February 8, 2019.

6. On August 20, 2015, the Bureau issued Smog Check Inspector License No. EO 638497 to respondent. The Smog Check Inspector License was revoked on February 8, 10 2019.

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Prior Discipline

7. On September 28, 2017, in a disciplinary matter entitled "In the Matter of the Accusation Against: Rene Banuelos Zamorano dba Z Smog Check and Rene Zamorano" the Bureau filed Accusation No. 79/16-15399, alleging respondent violated various sections of the Business and Professions Code and Health and Safety Code. Effective February 8, 2019, pursuant to a Default Decision and Order, respondent's Automotive Repair Dealer Registration No. ARD 281607, Smog Check Test Only Station License No. TC 281607, and Smog Check Inspector License No. EO 638497, were all revoked.

8. The facts leading to the revocations involved respondent being convicted of a crime. Respondent's crime involved "clean piping," which is a fraudulent method used to obtain passing scores on vehicles that would not otherwise pass a legitimate smog test.

9. On February 21, 2017, respondent was convicted, in the Superior Court of California, County of Los Angeles, on his plea of guilty, of violating Vehicle Code section 4463, subdivision (a)(1) (falsification of vehicle smog certification), a felony. Respondent was placed on three years formal probation. As part of his criminal plea agreement, respondent agreed to forfeit his Smog Check Station License. However, that license was not revoked until February 8, 2019.

10. On March 02, 2021, the criminal court granted respondent's Penal Code 1203.4 motion to set aside his conviction and dismiss the criminal case.

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Failure to Disclose Licenses and Conviction

11. On his August 31, 2022 application for licensure, respondent failed to disclose his conviction. Respondent disclosed his previously held Smog Check Inspector License No. EO 638497. Respondent failed to specifically disclose his previously held ARD registration or Smog Check Station license.

12. However, respondent's application must be viewed as a whole. While respondent did not list his previously held ARD registration or his Smog Check Station License, he disclosed that he previously held licenses issued by the Bureau and he disclosed that his licenses had been disciplined. Respondent's application also provided the Bureau's case number for the Default Decision and Order which revoked his three of his previously held licenses. Therefore, respondent provided sufficient information to apprise the Bureau regarding all required information on his application, which disclosed his three previously held licenses and disciplinary history.

Respondent's Testimony and Evidence

13. Respondent is currently employed as a vehicle mechanic at Gish Complete Auto, where he has worked for four years. He works under the supervision of a person who holds an ARD. Respondent is seeking a second chance at becoming licensed to perform smog inspections.

LEGAL CONCLUSIONS

Burden of Proof

1. Respondent bears the burden of proving the ARD should be issued to him. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) That

burden requires proof by a preponderance of the evidence (Evid. Code, § 115), which 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).

Relevant Statutes

2. Health and Safety Code Section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

3. Health and Safety Code, section 44072, provides, in pertinent part, that the Director may refuse to issue a license to any applicant for the reasons set forth in section 44072.1, which states, in pertinent part:

(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.

[¶] . . . [¶]

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

The Law Regarding Convictions Dismissed Pursuant to Penal Code section 1203.4.

4. California recently changed its law regarding the use of a conviction, or the failure to disclose that conviction on an application, as a basis to deny a person's

application for licensure, after said conviction was set aside pursuant to Penal Code 1203.4.

5. Pursuant to Business and Professions Code section 480, subdivision (c), "Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4."

6. Pursuant to Business and Professions Code section 480, subdivision (e), ". . . a board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

7. Therefore, respondent's conviction may not be used a basis to deny his application because it was dismissed pursuant to Penal Code 1203.4. Further, respondent's acts underlying the conviction may not be used as a basis for denial. Lastly, respondent's failure to disclose his conviction on this application can not solely serve as a basis to deny respondent's application, because even if he had disclosed it, it would not serve as a basis for denial of his application.

Complainant's Causes for Denial of Application

FIRST CAUSE FOR DENIAL: (PREVIOUSLY REVOKED LICENSES)

8. Cause does not exist to deny respondent's application for licensure pursuant to Business and Professions Code section 480, subdivision (a)(2), and Health and Safety Code section 44072.1, subdivision (b), based on the fact respondent's ARD registration, Smog Check Test Only Station License, and Smog Check Inspector License, were all revoked on February 8, 2019.

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9. This conclusion is reached because the revocations of the three licenses were based on respondent's conviction and the acts underlying his conviction. If the acts that served as the basis for revocation may not be considered, then the prior discipline and revocation of respondent's licenses, which were based on the conviction and underlying acts, should not be used as a basis to deny respondent's application.

10. To find otherwise would be contrary to the Legislature's intent expressed in Business and Professions Code section 480, subdivisions (c) and (e), which are designed to allow applicants a second chance despite a conviction, where that conviction has been dismissed by the Superior Court.

11. The Legislature did not express any limitation on the prohibition against using the underlying acts leading to the conviction. Further, they added the words "[N]otwithstanding any other provision of this code" which means that the prohibition applies to any other Business and Professions Code statutes. However, it is unclear whether the Legislature intended this prohibition to apply Health and Safety Code section 44072.1, subdivision (b). The plain language of Business and Professions Code section 480, subdivision (c) states that using the underlying acts leading to the conviction, as a basis to deny an application for licensure, is prohibited. Similarly, the revocations, which were based on the conviction and its underlying facts, should not serve as a basis to deny the application.

12. Otherwise, in a case such as this, Business and Professions Code section 480, subdivision (c), would have little effect. Many persons convicted of crimes ultimately have their license revoked. If the conviction, and its underlying facts, cannot be used to deny their application, but because their license was previously revoked, based on the conviction and its underlying facts, and their application is denied, Business and Professions Code section 480 would not have its intended impact. The

undersigned acknowledges that respondent's situation is different than an applicant for licensure who has not previously held a license.

SECOND CAUSE FOR DENIAL: (FAILURE TO DISCLOSE ALL LICENSES AND CONVICTION ON APPLICATION)

13. Cause does not exist to deny respondent's application for licensure under Business and Professions Code section 480, subdivision (e), because respondent did not make a false statement of fact, which was required to be revealed, on his application. Respondent listed his previously held Smog Check Inspector License No. EO 638497. He did not list his previously held ARD registration or his Smog Check Station License. However, in his application, respondent disclosed he had previously been licensed by the Bureau and he disclosed that his licenses had been disciplined. Respondent's application also provided the Bureau's case number for the Default Decision and Order which revoked his three licenses. Respondent provided sufficient information as requested in the application.

14. On Question 10, subdivision (g), the application asked respondent to disclose all past criminal convictions and respondent failed to do so. However, Business and Professions Code section 480, subdivision (e), prohibits the Bureau from denying respondent's application based solely on respondent's failure to disclose his conviction because even if respondent had disclosed his conviction, the conviction itself cannot serve as a basis for denial, as previously discussed.

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THIRD CAUSE FOR DENIAL: (ACTS INVOLVING DISHONESTY FRAUD OR DECEIT)

15. Cause does not exist to deny respondent's application for licensure under Health and Safety Code section 44072.1, subdivision (d), even though respondent committed acts involving dishonesty, fraud, or deceit whereby the public-at-large was injured.

16. Pursuant to Business and Professions Code section 480, subdivision (c), "Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, *or on the basis of the acts underlying the conviction*, that has been dismissed pursuant to Section 1203.4." (Emphasis added.)

17. The Legislature did not express any limitation on the prohibition against using the underlying acts leading to the conviction. Further, they added the words "[N]otwithstanding any other provision of this code" which means that the prohibition applies to any other Business and Professions Code statutes. However, it is unclear whether the Legislature intended this prohibition to apply Health and Safety Code section 44072.1, subdivision (d). The plain language of Business and Professions Code section 480, subdivision (c) states that using the underlying acts leading to the conviction as a basis to deny an application for licensure is prohibited. Therefore, the undersigned concludes that those underlying facts cannot be used in this case to establish that respondent "committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefited." (Health and Saf. Code § 44072.1, subd. (d).)

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ORDER

The application of respondent Rene Zamorano for licensure as a Smog Check Inspector License is hereby granted.

DATE: **07/05/2023**

Signed Copy on File

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings