

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

In the Matter of the Accusation and Petition to Revoke Probation Against:

A & A ALL PRO AUTO REPAIR; IGNACIO ANDRADE, OWNER

439 Mercey Springs Road

Los Banos, CA 93635

Automotive Repair Dealer Registration No. ARD 227686

Smog Check Station License No. RC 227686

Lamp Station License No. LS 227686, Class A

Brake Station License No. BS 227686, Class C

Respondent.

Case No. 77/21-3532

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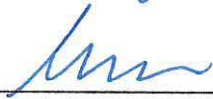
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DECISION

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 August 9, 2022.

IT IS SO ORDERED this 22 day of June, 2022.



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

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Respondents**

Agency Case No. 77/21-3532

OAH No. 2021120681

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 18, 2022, from Sacramento, California.

Brent O. Jex, Deputy Attorney General (DAG), represented Patrick Dorais (complainant), Chief, Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

William Ferreira, Attorney at Law, represented respondents A & A All Pro Auto Repair and Ignacio Andrade (collectively, "respondent"), who was present at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on April 18, 2022.

FACTUAL FINDINGS

Respondent's License and Disciplinary History

1. Between 2003 and 2010, the Bureau issued respondent the following licenses: on an unspecified date in 2003, Automotive Repair Dealer (ARD) registration number 227686; on October 4, 2007, smog check station license number RC 227686; and on September 7, 2010, lamp station license number LS 227686, class A, and brake station license number BS 227686, class C (collectively, the "Auto Repair Licenses").

2. The ARD registration and smog check station license were in full force and effect at all relevant times and will expire on May 31, 2022, unless renewed. The lamp station and brake station licenses were in full force and effect until they expired on May 31, 2020.¹

2019 ACCUSATION AND PROBATION

3. On April 2, 2019, complainant filed an Accusation (2019 Accusation) seeking to discipline ARD registration number 248570, a separate registration that Mr. Andrade held as the owner of, and doing business as, A & A Auto Body (the Auto Body registration). The 2019 Accusation alleged that A & A Auto Body made untrue or

¹ The Bureau is authorized to discipline an expired license. (Bus. & Prof. Code, § 118, subds. (b), (c).)

misleading statements, committed fraud, and failed to comply with the Automotive Repair Act and related regulations regarding two different customer vehicles. Specifically, the 2019 Accusation alleged that A & A Auto Body falsely claimed it completed work it did not do, charged and received payment for work it did not complete, failed to include its ARD registration number and corresponding business name on its invoices, and failed to itemize parts, labor, and other information on its invoices.

4. The 2019 Accusation also sought to discipline respondent's Auto Repair Licenses pursuant to Business and Professions Code² section 9884.7, subdivision (c). That subdivision authorizes the Bureau to discipline all licenses held by any licensee found to have engaged in a course of repeated and willful violations of the Automotive Repair Act and related regulations.

5. Effective September 26, 2019, respondent resolved the 2019 Accusation via a Stipulated Settlement and Disciplinary Order (Stipulated Settlement) with the Bureau, pursuant to which he admitted the truth of each and every allegation in the 2019 Accusation. Respondent further agreed that the Auto Body registration and the Auto Repair Licenses were all subject to discipline.

6. Pursuant to the Stipulated Settlement, the Bureau revoked the Auto Body registration. It also revoked the Auto Repair Licenses but stayed the revocations for five years subject to terms and conditions of probation. As relevant to this matter, the

² All statutory references are to the Business and Professions Code, unless otherwise specified.

probation terms required respondent to obey all laws and maintain all licenses in good standing.

2021 ACCUSATION

7. On October 14, 2021, complainant, in his official capacity, signed and thereafter filed an Accusation and Petition to Revoke Probation against respondent (2021 Accusation). The 2021 Accusation alleged cause to discipline respondent's Auto Repair Licenses for making untrue or misleading statements, fraud, and failure to comply with the Automotive Repair Act and related regulations related to work on a Bureau undercover vehicle. The 2021 Accusation further alleged cause to revoke respondent's probation for failure to obey all laws and failure to maintain the lamp and brake station licenses in good standing. Respondent filed a Notice of Defense and Notice of Intent to Assert Affirmative and/or Special Defenses (Notice of Defense) and requested a hearing. This hearing followed.

Bureau's Evidence

8. Michael Roberts is a Program Representative (PR) II for the Bureau who prepares and inspects undercover vehicles. He has worked in the automotive repair industry since 1983, has been employed by the Bureau since approximately 2005, and is a licensed automotive repair technician and Master Automotive Technician certified by the National Institute for Automotive Service Excellence (ASE). For the past 13 years, he has worked in the Bureau's forensic documentation laboratory in Sacramento.

9. In September 2020, Mr. Roberts inspected a Bureau-owned 2007 Dodge Charger (Charger) and documented its condition. He reset the Charger's Onboard Diagnostic (OBD) readiness monitors and test drove it. The malfunction indicator lamp (MIL or check-engine light) did not illuminate. Mr. Roberts then marked,

photographed, and installed new spark plugs, new coil-to-spark-plug insulator boots, and new heated oxygen sensors (HO2S's). He tested the spark plugs and HO2S's heater circuit terminals and found them all to be within manufacturers' specifications. He then test drove the Charger again and found it drove normally and all system readiness monitors except the unrelated Fuel Evaporative (EVAP) monitor were completed. The Charger's Electronic Control Module (ECM), also known as a Power Control Module (PCM), had no current or pending diagnostic trouble codes (DTCs) and all HO2S data values were within normal ranges.

10. Next, Mr. Roberts introduced a malfunction to the Charger by breaking the wire for the Bank 1 Sensor 1 (B1S1) HO2S ground circuit located at terminal G109. Breaking this wire caused the check-engine light to illuminate and DTC P0032, "O2 Sensor 1/1 Heater Circuit High," to be stored in the ECM. He marked and photographed the ECM and screenshots of the Bureau's scanner showing the P0032 DTC.

11. Based on his training and experience, Mr. Roberts believed the only repair necessary to extinguish the check-engine light and correct the P0032 DTC was to identify and repair the broken wire at terminal G109. Additionally, Mr. Roberts consulted Chrysler Motor Corporation's technical service manual and two other technical reference manuals, AllData and Mitchell ProDemand. These manuals are common in the automotive repair industry and include diagnostic trouble-shooting trees to guide technicians to the correct diagnosis and repair. Following the diagnostic trouble-shooting tree in any of the three manuals would lead a technician to find and repair the broken wire at terminal G109 before replacing the ECM or oxygen sensors. Once that broken wire was repaired, a technician would and should know that additional repairs were unnecessary.

12. Mr. Roberts secured the Charger at a Bureau facility until December 1, 2020, when he released it to the custody of another Bureau representative. On March 16, 2021, William Nicks received custody of the Charger. Mr. Nicks has been a PR II for the Bureau for approximately 11 years. He handles all Fresno field office probation cases and has overseen respondent's probation since 2020. As part of an undercover operation to determine whether respondent was following the Bureau's laws and regulations, Mr. Nicks released the Charger to a Bureau undercover operator and instructed him to visit respondent's shop and request diagnosis of the illuminated check-engine light.

13. The undercover operator took the Charger to respondent's shop and requested diagnosis of the illuminated check-engine light. Respondent's employee provided him with Repair Estimate 018405, which the undercover operator signed. Repair Estimate 018405 was dated March 16, 2021, included respondent's ARD registration number, identified the shop as "A & A All Pro Auto Repair Inc.," and stated a \$75 charge to inspect the check-engine light. It did not include an odometer reading for the Charger.

14. On March 24, 2021, respondent's employee, Fernando, told the undercover operator by phone that replacing two oxygen sensors and the PCM would repair the Charger. Fernando told the undercover operator the total repair cost would be \$1,687.86. On March 25, 2021, the undercover operator visited respondent's shop, paid a \$400 deposit, and received a receipt, which he later provided to Mr. Nicks. The receipt was dated March 25, 2021, and under respondent's contact information included the line "BAR # 335327D."

15. Respondent completed work on the Charger on April 19, 2021. On April 20, 2021, the undercover operator visited respondent's shop, paid the balance of

\$1,287.86, and received Repair Invoice 018405, which was a copy of Repair Estimate 018405 but included the Charger's odometer reading and additional information about the work respondent performed. The undercover operator signed Repair Invoice 018405, which he later provided to Mr. Nicks. Repair Invoice 018405 stated, among other things, that respondent "found several [DTC] codes related with O2 sensors, but also found ECM bad communication [. . .]."³ It also included cost amounts for three parts: one new ECM, one new oxygen sensor upstream, and one new oxygen sensor downstream.

16. On April 21, 2021, the Charger was returned to Mr. Roberts's custody. He physically re-inspected the Charger and scanned the ECM for DTCs. He found the ECM had no DTCs present and all readiness monitors except the unrelated EVAP and Exhaust Gas Recirculation (EGR) monitors ran to completion. He then reset the ECM and road tested the Charger. It drove normally and the O2 heater circuits monitors were completed. Upon physical inspection, he found the ECM and both the upstream and downstream HO2S's (B1S1 and B1S2) were replaced.

17. Mr. Roberts further found that the broken wire at terminal G109 was not repaired. Instead, a wire repair/overlay had been installed into the harness side of the B1S1 HO2S connector and grounded to the driver/left front shock tower. This wire overlay repair was not disclosed on Repair Invoice 018405.

18. Mr. Roberts prepared an investigative report documenting his original inspection of the Charger, the malfunction he introduced, and his subsequent re-

³ Portions of Repair Invoice 018405 are illegible.

inspection following respondent's work. At hearing he testified consistent with his report. In his report, he concluded:

The repair of the broken/open wire at the terminal "G109" location or the wire overlay of the ground circuit at the B1S1 connector were the only repairs necessary to correct the illuminated MIL and DTC P0032. Proper repair/testing procedures as directed by published manufacturers and aftermarket sources for DTC P0032, would have led the technician to repair the open ground wire at terminal "G109" before replacing any of the vehicle's oxygen sensors or the vehicle's ECM.

19. At hearing, Mr. Roberts testified that once a technician diagnoses a broken or open wire in a circuit, identifying the exact broken or open wire can be difficult and time consuming. As a result, a wire overlay, such as the one respondent's technician performed on the Charger's ground circuit at the B1S1 connector, is an acceptable method of repair. He added that any such repair should be included on the final invoice.

Respondent's Evidence

20. Respondent has owned and operated A & A All Pro Auto Repair for approximately 20 years. Before that, he owned a different repair shop for approximately nine years. He has worked as a mechanic his "whole life." Approximately seven or eight years ago, he purchased the auto body shop next to his to expand his business. He named it A & A Auto Body and ran both businesses simultaneously. He usually works approximately 14 hours per day, six days per week.

21. Prior to the 2019 Accusation, respondent maintained nine employees at both facilities. He now employs just seven employees, six of whom work in the auto repair side of the business.

22. The employee who repaired the Charger, Raul, no longer works for respondent. Respondent did not know Raul had misdiagnosed the problem with the Charger until he received the 2021 Accusation from the Bureau. By then, Raul no longer worked for respondent.

23. Prior to receiving the 2021 Accusation, respondent had never had a problem with Raul's work. Raul initially worked for respondent approximately eight years ago, then left to take a job at a car dealership, and then returned to respondent approximately three years ago. He typically repaired one to two vehicles per day five days per week, for a total of approximately 350 annually.

24. At his shop, respondent maintains five different DTC scanners and multiple technical reference manuals, including AllData and Mitchell ProDemand. He also provides laptops to the employees to access the technical reference manuals, which he expects them to do as part of the industry standard.

25. Respondent understands why the Bureau filed the 2021 Accusation. He does not dispute that Raul made a mistake diagnosing the Charger, although he regrets that it happened. Since then, he has instituted a new policy to require his most senior technician, Fernando, to either perform or double check all diagnostics. He believes Fernando is "a perfectionist" who would not have allowed Raul's misdiagnosis if he had known about it. In addition, respondent has become more personally involved in the diagnostic work as well.

26. Respondent currently pays \$800 per month toward the cost recovery award related to the 2019 Accusation. He has no alternative means of support besides working on vehicles, and his wife relies on him for financial support.

Analysis

27. The Accusation alleges 11 causes to discipline respondent's Auto Repair Licenses and two causes to revoke respondent's probation.

UNTRUE OR MISLEADING STATEMENTS – FIRST CAUSE FOR DISCIPLINE

28. Complainant alleges that respondent made statements he knew or should have known were untrue or misleading when his employee told the undercover operator that replacing the PCM and two oxygen sensors was necessary to repair the Charger. Mr. Roberts credibly explained that the only repair necessary to extinguish the check-engine light and correct the P0032 DTC was to identify and repair the broken wire at terminal G109. Respondent did not dispute that opinion, but rather argued at hearing that his employee's error was in good faith.

29. Mr. Roberts further explained that following the diagnostic troubleshooting tree in either the manufacturer's or third-party manuals would lead a technician to find and repair the broken wire at terminal G109 before replacing the PCM or oxygen sensors. Respondent acknowledged his technicians have access to both AllData and Mitchell ProDemand. Consequently, the evidence established that respondent knew or should have known that replacing the PCM and two oxygen sensors was not necessary to repair the Charger. His employee's statement to the undercover operator that such repairs were necessary was therefore untrue or misleading.

FRAUD – SECOND, SIXTH, AND NINTH CAUSES FOR DISCIPLINE

30. Complainant alleges respondent committed fraud when he obtained payment from the undercover operator for two oxygen sensors and a PCM that were not needed to repair the Charger. Respondent obtained such payment as a result of his employee misdiagnosing the problem, and Fernando subsequently telling the undercover operator that replacing two oxygen sensors and the PCM was necessary to repair the Charger. As Mr. Roberts credibly explained, that statement was a misrepresentation of a material fact. Furthermore, following the diagnostic trouble-shooting tree in either the manufacturer's or a third-party's manual should have led respondent's technician to find and repair the broken wire at terminal G109 before replacing the PCM or oxygen sensors. However, complainant did not provide evidence that either respondent's employee's misdiagnosis or the resulting request for payment based on the misdiagnosis were the result of fraud as opposed to a good faith error. Fraud "is never presumed; it must be established by proof." (*Dorn v. Lichenin* (1951) 105 Cal.App.2d 796, 801.) Without such proof, there is no basis to sustain the charges of fraud in the Accusation.

FAILURE TO RECORD ODOMETER READING – THIRD CAUSE FOR DISCIPLINE

31. Complainant alleges respondent failed to include an odometer reading on Repair Estimate 018405, dated March 16, 2021. Complainant submitted into evidence a copy of Repair Estimate 018405, which was signed by the undercover operator but does not include an odometer reading for the Charger. The evidence therefore supported this allegation.

**FAILURE TO COMPLY WITH THE AUTOMOTIVE REPAIR ACT – FOURTH,
SEVENTH, AND TENTH CAUSES FOR DISCIPLINE**

32. Complainant alleges respondent's Auto Repair Licenses are subject to discipline for using a business name that does not match Bureau records on Repair Estimate 018405 and Repair Invoice 018405, and for using an incorrect Bureau license number on the receipt dated March 25, 2021, both in violation of section 9884.8. That section, however, does not address the business name or Bureau license number a licensee must use on its invoices.⁴ Consequently, the evidence did not establish that respondent violated section 9884.8 with regard to his business name or Bureau license number.

33. Complainant also alleges respondent's Auto Repair Licenses are subject to discipline for failing to disclose the wire overlay of the ground circuit at the B1S1 connector on Repair Invoice 018405, dated April 20, 2021, in violation of section 9884.9, subdivision (a). That section, however, addresses the contents of pre-work estimates and authorizations, not post-work invoices.⁵ Consequently, respondent's

⁴ California Code of Regulations, title 16, section 3356, subdivision (b), addresses the business name and Bureau license number a licensee must use on its invoices. Complainant alleged separate causes for discipline for violating this section, which are addressed separately in Factual Findings 34 through 36, below.

⁵ California Code of Regulations, title 16, section 3356, subdivision (c), identifies the required contents of an invoice, but complainant did not allege a cause for discipline for violating that section.

failure to list the wire overlay work on Repair Invoice 018405 did not constitute a violation of section 9884.9, subdivision (a).

FAILURE TO COMPLY WITH BUREAU REGULATIONS – FIFTH, EIGHTH, AND ELEVENTH CAUSES FOR DISCIPLINE

34. Complainant alleges respondent's Auto Repair Licenses are subject to discipline for using a business name that does not match Bureau records on Repair Estimate 018405 and Repair Invoice 018405, and for using an incorrect Bureau license number on the receipt dated March 25, 2021, both in violation of California Code of Regulations, title 16 (Regulations), section 3356, subdivision (b). That section requires invoices to show the ARD registration number and the corresponding business name and address as shown in the Bureau's records.

35. Repair Estimate 018405 and Repair Invoice 018405 both stated respondent's business name as "A & A All Pro Auto Repair Inc." According to the Bureau's records, respondent's business name is "A & A All Pro Auto Repair." The only difference between the two is that respondent's invoices included the business entity identifier⁶ "Inc." after the business name. Rather than risking public confusion, including the business entity identifier enhances public protection because it alerts the public as to the corporate status of the business. Respondent's addition of "Inc." as a corporate identifier at the end of the business name on its invoices did not constitute a violation of section 3356, subdivision (b), of the Regulations.

⁶ California Code of Regulations, title 2, section 21001, subd. (c), lists "Inc." as "an example[] of words or letters presumed to be business entity identifiers" when used in a business name.

36. Section 3356, subdivision (b), also requires that invoices include the registrant's correct ARD registration number. It is undisputed that the receipt dated March 25, 2021, included respondent's incorrect ARD registration number. However, that document was a receipt for a cash deposit, not an invoice. As such, section 3356, subdivision (b), does not apply to it, and the presence of the wrong ARD registration number does not constitute a violation of that section of the Regulations.

FAILURE TO OBEY ALL LAWS – FIRST CAUSE TO REVOKE PROBATION

37. Complainant alleges respondent's license probation is subject to revocation for violating Condition 1 of probation, which required respondent to "comply with all federal and state statutes, regulations and rules governing all [Bureau] registrations and licenses held by [r]espondent." As discussed in Factual Findings 28, 29, and 31, above, and Legal Conclusions 2 and 7, below, the evidence proved that respondent violated sections of the Automotive Repair Act regarding the Charger.

FAILURE TO MAINTAIN A VALID LICENSE – SECOND CAUSE TO REVOKE PROBATION

38. Complainant alleges respondent's license probation is subject to revocation for violating Condition 8 of probation, which required respondent to "maintain a current and active registration and/or license(s) with [the Bureau], including any period during suspension or probation is tolled." Condition 8 further provided:

If [r]espondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal, [r]espondent'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.

39. As discussed in Factual Finding 2, above, respondent's lamp station and brake station licenses expired on May 31, 2020. As of the date of hearing, they had not been renewed.

APPROPRIATE DISCIPLINE

40. The Bureau maintains Guidelines for Disciplinary Orders and Terms of Probation (Guidelines). (Regulations, § 3395.4.) It is only appropriate to deviate from the Guidelines when the Bureau in its sole discretion determines that the facts of the particular case warrant such deviation. (*Ibid.*) The Guidelines include recommended discipline for violating specific laws and regulations governing licensees. The recommended discipline for violating the laws and regulations alleged in the Accusation is revocation of the licenses, stayed, with a term of probation ranging from two to five years.

41. The Guidelines also include aggravating and mitigating factors to consider when determining the appropriate level of license discipline in a particular case. The aggravating factors relevant to this matter include respondent's prior license discipline and ongoing probationary status, which suggest these violations are part of a pattern of practice. The mitigating factors relevant to this matter include respondent's measures to correct his business practices to minimize the likelihood of recurrence of the violations. Specifically, respondent no longer employs the technician who misdiagnosed the Charger, and respondent now requires his most senior

technician either to perform the diagnosis or check that other employees' diagnoses are accurate and complete.

42. In this case, cause exists to discipline respondent's Auto Repair Licenses for making an untrue or misleading statement and for failing to include an odometer reading on an invoice. Respondent was on probation based on the 2019 Accusation after his auto body repair facility falsely claimed it completed work it did not do, charged and received payment for work it did not complete, failed to include its ARD registration number and corresponding business name on its invoices, and failed to itemize parts, labor, and other information on its invoices. In light of that disciplinary history, respondent's current violations are concerning because they demonstrate a pattern of practice of failing to comply with the Bureau's laws and regulations. In mitigation, respondent has taken steps to try to ensure these violations do not recur. Specifically, he is more personally involved in the work, and he requires that his most senior technician either performs or double checks all diagnoses.

43. "The object of an administrative proceeding aimed at revoking a license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome." (*Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 184.) The Bureau placed respondent's Auto Repair Licenses on probation and brought this instant action not to punish him, but to ensure public protection. When all the evidence and the Bureau's Guidelines are considered, although cause exists to discipline respondent's Auto Repair Licenses, revoking them would be unduly punitive. Instead, instituting the Bureau's recommended discipline of a stayed revocation with a new probation term of five years is the appropriate license discipline to serve the goal of public protection.

Affirmative Defenses

44. In his Notice of Defense, respondent raised the following affirmative and special defenses: agency misconduct, entrapment, and destruction of subject matter. Specifically, he alleged the Bureau caused the spoliation of evidence when it "failed to exercise due care in the preservation of evidence during their inspection process; in some cases, repairing the alleged defects, thereby preventing [r]espondent from a subsequent inspection to rebut the allegations contained herein." He further alleged the Bureau "failed to exercise due care in the preparation of the vehicles prior to the undercover operation" and "used techniques specifically designed to confuse and mislead automotive repair facilities," such as making "repeated attempts to induce the technicians to pass an non-conforming vehicle by bringing in the vehicle several times to [r]espondent's facility to secure passing certificates for the undercover vehicle." Finally, he argued the Bureau "failed to exercise due care in the preservation of evidence during their undercover operation" because it "should have requested the old parts to confirm the facility's diagnosis" and "permitted [respondent's] representative to be present to view disassembly and document any alleged deficiencies."

45. At hearing, respondent did not present evidence to prove his affirmative defenses. Specifically, the evidence did not establish that the Bureau "repaired the alleged defects" after respondent worked on it. Respondent presented no evidence to suggest the Bureau's use of an undercover vehicle with an introduced malfunction was designed to confuse or mislead respondent. And respondent did not present any evidence to rebut Mr. Roberts's conclusion that the ECM and oxygen sensors were in working condition at the time respondent received the Charger. Consequently, as

explained in Legal Conclusions 22 through 24, below, respondent's affirmative defenses have been considered and are rejected.

Costs

46. The Bureau submitted a certified copy of the actual costs of investigation of this matter. The Bureau incurred a total of \$4,308.50 in investigative costs for the time spent reviewing documents and evidence, conducting surveillance, and writing reports. The attorney general's office certified its prosecution costs of \$10,837.50 for legal services, including case evaluation and preparation, document analysis, trial and witness preparation, and paralegal work. The total amount of costs of investigation and prosecution of this matter is \$15,146.

47. Respondent argued that the investigative and enforcement costs are excessive in light of the alleged wrongdoing. Respondent further argued that his financial circumstances would not enable him to make a lump sum payment of any cost award and would require a payment plan. The reasonableness of the costs is more fully discussed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. To prevail in a disciplinary proceeding, complainant must prove the claims in the accusation by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th, 911, 916; Evid. Code, § 115.) Respondent has the burden to prove rehabilitation, which is akin to an affirmative defense. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.) A preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

Applicable Law and Causes for Discipline

UNTRUE OR MISLEADING STATEMENTS – FIRST CAUSE FOR DISCIPLINE

2. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members make or authorize "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." (§ 9884.7, subd. (a)(1).) As discussed in Factual Findings 14 and 28, respondent's employee told the undercover operator that replacing two oxygen sensors and the PCM was necessary to repair the Charger. That statement was untrue and respondent and/or his employee knew, or by exercise of reasonable care should have known, it was untrue. Cause therefore exists to discipline respondent's ARD registration pursuant to section 9884.7, subdivision (a)(1).

FRAUD – SECOND, SIXTH, AND NINTH CAUSES FOR DISCIPLINE

3. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members engage in "conduct that constitutes fraud." (§ 9884.7, subd. (a)(4).) Pursuant to section 9884.7, subdivision (e), "fraud" includes, among other things:

(1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.

(2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.

(3) A promise or representation not made honestly and in good faith.

(4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

4. Complainant alleges respondent committed fraud when he obtained payment from the undercover operator for two oxygen sensors and a PCM that were not needed to repair the Charger. As discussed in Factual Finding 30, the evidence did not establish that respondent's employees' misdiagnosis or subsequent request for payment based on the misdiagnosis were the result of fraud. Cause therefore does not exist to discipline respondent's ARD registration pursuant to section 9884.7, subd. (a)(4).

5. The Bureau may also discipline a lamp station license or brake station license "if the licensee or any partner, officer, or director thereof . . . [c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured." (§ 9889.3, subd. (d).) The evidence did not demonstrate that Raul or Fernando were "the licensee or [a] partner, officer, or director thereof." Therefore, the evidence did not establish that respondent or his partner, officer, or director committed any act involving dishonesty, fraud, or deceit whereby another is injured, and no cause exists to discipline respondent's lamp station license or brake station license pursuant to section 9889.3, subdivision (3).

6. The Bureau also seeks to discipline respondent's smog check station license pursuant to section 9889.3, subdivision (d). That section authorizes the Bureau to discipline licenses "as provided in" Article 7 of the Automotive Repair Act. By its own terms, Article 7 concerns "any license issued pursuant to Articles 5 and 6" of the Automotive Repair Act. (§ 9889.1.) Articles 5 and 6 concern lamp and brake adjusting stations (§§ 9887.1, 9888.1, subd. (a)), not smog check stations.⁷ Consequently, section 9889.3, subdivision (d), does not apply to respondent's smog check station license, and no cause exists to discipline that license pursuant thereto.

FAILURE TO RECORD ODOMETER READING – THIRD CAUSE FOR DISCIPLINE

7. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members causes or allows a customer "to sign any work order that does not state . . . the automobile's odometer reading at the time of repair." (§ 9884.7, subd. (a)(2).) As discussed in Factual Findings 13 and 31, respondent's employee allowed the undercover operator to sign Repair Estimate 018405 on March 16, 2021, even though it did not state the Charger's odometer reading. Cause therefore exists to discipline respondent's ARD registration pursuant to section 9884.7, subdivision (a)(2).

FAILURE TO COMPLY WITH THE AUTOMOTIVE REPAIR ACT – FOURTH, SEVENTH, AND TENTH CAUSES FOR DISCIPLINE

8. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members fails in any material

⁷ Health and Safety Code section 44072 authorizes the discipline of smog check station licenses.

respect to comply with the provisions of the Automotive Repair Act. (§ 9884.7, subd. (a)(6).) Complainant alleges respondent's ARD registration is subject to discipline under this section for using a business name that does not match Bureau records on Repair Estimate 018405 and Repair Invoice 018405, and for using an incorrect Bureau license number on the receipt dated March 25, 2021, both in violation of section 9884.8.

9. Section 9884.8 provides:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

10. As discussed in Factual Finding 32, section 9884.8 does not address the business name or Bureau license number a licensee must use on its invoices. Consequently, the evidence did not establish that respondent violated section 9884.8 with regard to his business name or Bureau license number, and no cause exists to discipline respondent's ARD registration under section 9884.7, subdivision (a)(6), for violating section 9884.8.

11. Complainant also alleges respondent's ARD registration is subject to discipline under section 9884.7, subdivision (a)(6), for failing to disclose the wire overlay of the ground circuit at the B1S1 connector on Repair Invoice 018405, dated April 20, 2021, in violation of section 9884.9, subdivision (a).

12. Section 9884.9, subdivision (a), provides, in relevant part:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price . . . without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated or posted price is insufficient and before the work not estimated or posted is done or the parts not estimated or posted are supplied.

13. As discussed in Factual Finding 33, section 9884.9, subdivision (a), requires that a licensee must provide a customer with a written estimate and receive

authorization before proceeding with work. It does not address the contents of an invoice after work is already performed, except to mandate that a licensee shall not charge for work or parts in excess of the estimate.⁸ Consequently, the evidence did not establish that respondent violated section 9884.9, subdivision (a), by not disclosing the wire overlay of the ground circuit at the B1S1 connector on Repair Invoice 018405, and no cause exists to discipline respondent's ARD registration under section 9884.7, subdivision (a)(6), for violating section 9884.9, subdivision (a).

FAILURE TO COMPLY WITH BUREAU REGULATIONS – FIFTH, EIGHTH, AND ELEVENTH CAUSES FOR DISCIPLINE

14. In exercising its licensing, regulatory, and disciplinary functions, the Bureau's highest priority is public protection. (§ 9880.3.) To achieve this, the Bureau maintains Regulations that are reasonably necessary to carry out the purposes of the Automotive Repair Act and declare the policy of the Bureau. (§ 9882, subd. (a)(1).)

15. The Bureau may discipline an ARD registration if the licensee or any of its automotive technicians, employees, partners, officers, or members fails in any material respect to comply with the provisions of the Regulations. (§ 9884.7, subd. (a)(6).) Complainant alleges respondent's ARD registration is subject to discipline under this section for using a business name that does not match Bureau records on Repair Estimate 018405 and Repair Invoice 018405, and for using an incorrect Bureau license

⁸ Section 3356, subdivision (c), of the Regulations identifies the required contents of an invoice, but complainant did not allege cause for discipline for violating that section.

number on the receipt dated March 25, 2021, both in violation of section 3356, subdivision (b), of the Regulations.

16. Section 3356, subdivision (b), of the Regulations provides: "The invoice shall show the automotive repair dealer's registration number and the corresponding business name and address as shown in the Bureau's records." As discussed in Factual Findings 34 and 35, respondent's addition of "Inc." as a corporate identifier at the end of its name on its invoices did not constitute a violation of section 3356, subdivision (b), of the Regulations, and no cause exists to discipline his ARD registration under section 9884.7, subdivision (a)(6), for violation of section 3356, subdivision (b), of the Regulations.

17. As discussed in Factual Finding 36, section 3356, subdivision (b), of the Regulations applies to invoices. The receipt dated March 25, 2021, was not an invoice. As such, no cause exists to discipline respondent's ARD registration under section 9884.7, subdivision (a)(6), for violation of section 3356, subdivision (b), of the Regulations.

Causes to Revoke Probation

18. Pursuant to Condition 7 of respondent's probation:

If [r]espondent 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 [r]espondent is served notice of [the 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.

FAILURE TO OBEY ALL LAWS – FIRST CAUSE TO REVOKE PROBATION

19. Condition 1 of respondent's probation required respondent to "comply with all federal and state statutes, regulations and rules governing all [Bureau] registrations and licenses held by [r]espondent." As discussed in Factual Findings 28, 29, and 31, and Legal Conclusions 2 and 7, the evidence proved that, while on probation, respondent violated sections of the Automotive Repair Act regarding the Charger. Cause therefore exists to revoke respondent's probation pursuant to Condition 7 for violating Condition 1.

FAILURE TO MAINTAIN A VALID LICENSE – SECOND CAUSE TO REVOKE PROBATION

20. Condition 8 of respondent's probation required him to "maintain a current and active registration and/or license(s) with [the Bureau], including any period during suspension or probation is tolled." As discussed in Factual Finding 2, respondent's lamp station and brake station licenses expired on May 31, 2020, and have not been renewed. Cause therefore exists to revoke respondent's probation pursuant to Condition 7 for violating Condition 8.

Appropriate Discipline

21. As discussed in Factual Findings 40 through 43 and Legal Conclusions 2 and 7, cause exists to discipline respondent's Auto Repair Licenses. However, when considering the evidence as a whole and the Bureau's Guidelines, the appropriate

discipline is a stayed revocation with a new probation term of five years under the same terms and conditions.

Affirmative Defenses

AGENCY MISCONDUCT

22. As discussed in Factual Finding 45, respondent did not present evidence that established the Bureau engaged in misconduct by failing to exercise due care in the preservation of evidence during the inspection process or by repairing the alleged defects after receiving the Charger back from respondent. This affirmative defense is therefore denied.

ENTRAPMENT

23. As discussed in Factual Finding 45, respondent did not present evidence that established the Bureau entrapped him by failing to exercise due care in the preparation of the vehicles prior to the undercover operation or using techniques specifically designed to confuse and mislead automotive repair facilities. This affirmative defense is therefore denied.

DESTRUCTION OF SUBJECT MATTER

24. As discussed in Factual Finding 45, respondent did not present evidence that established the Bureau destroyed subject matter by failing to request the old replaced parts from respondent to confirm respondent's diagnosis or by failing to permit respondent's representative to be present to view and document the Charger's subsequent reinspection. This affirmative defense is therefore denied.

Costs

25. Section 125.3 provides that a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. 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 under statutory provisions such as Business and Professions Code section 125.3. Those factors include whether the licensee was successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

26. As discussed in Factual Findings 46 and 47, complainant seeks \$15,146 in investigation and enforcement costs. When applying the *Zuckerman* factors, that amount is excessive. Assessing the full costs to respondent would unfairly penalize him for using the hearing process to defend himself and seek a reduction of the discipline sought. Furthermore, respondent not only maintained a subjective good faith belief in the merits of his position, but was successful in defending nine of the 11 causes for discipline. In addition, respondent is already paying \$800 per month toward his cost bill associated with the 2019 Accusation, and has limited other financial means. Under these circumstances, reducing the Bureau's costs to \$7,500 and permitting respondent to pay those costs pursuant to a monthly payment plan is appropriate.

Other Matters

27. Pursuant to section 9884.7, subdivision (c), the Bureau may discipline the registration for all places of business operated in California by an ARD upon a finding that the ARD has, or is, engaged in a course of repeated and willful violations of the Automotive Repair Act or the Bureau's Regulations. Although the evidence established two separate violations of the Automotive Repair Act, the evidence did not establish that those violations were part of a course of repeated and willful violations. Cause for discipline has therefore not been established pursuant to section 9884.7, subdivision (c).

28. Health and Safety Code section 44072.8 provides that when a license has been revoked or suspended under the Motor Vehicle Inspection Program, it constitutes cause to suspend or revoke any additional license issued under the Motor Vehicle Inspection Program. There was no evidence that any other license was issued to respondent under the Motor Vehicle Inspection Program.

29. Pursuant to section 9889.9, if respondent's lamp station or brake station licenses are revoked, any additional licenses issued under Articles 5 or 6 of the Automotive Repair Act in respondent's name may also be revoked. There was no evidence that any other licenses were issued to respondent under Articles 5 or 6 of the Automotive Repair Act.

ORDER

The Accusation and Petition to Revoke Probation against respondent A & A All Pro Auto Repair, Ignacio Andrade, owner, is SUSTAINED in part and DENIED in part. ARD registration No. ARD 227686 is invalidated, and smog check station license

number RC 227686, lamp station license number LS 227686, class A, and brake station license number BS 227686, class C, are revoked. The revocations of the lamp station license and brake station licenses will be effective immediately. However, the ARD Registration invalidation and smog check station license revocation are stayed, and are placed on probation for five years, subject to 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 Bureau 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 the Bureau on a schedule set by the Bureau, 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 the 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.

4. **Access to Examine Vehicles and Records.** Respondent shall provide the 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 the Bureau's laws and regulations.

5. **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 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost, reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. **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 the 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.

7. **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 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.

8. **Cost Recovery.** Respondent shall pay the Bureau \$7,500 for the reasonable costs of the investigation and enforcement of case number 77/21-3532. Respondent shall be permitted to make monthly payments as agreed by the Bureau, so long as the full amount is paid no later than six months prior to the termination of probation. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case number 77/21-3532. 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. The Bureau 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.

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

10. **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 the Bureau. The Director and the Bureau Chief reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision. Respondent may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of 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 or licensure and pay all outstanding fees or cost recovery owed to the Bureau and left outstanding at the time of surrender.

DATE: May 18, 2022


Sean Gavin (May 18, 2022 14:57 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA
Attorney General of California
2 ANDREW M. STEINHEIMER
Supervising Deputy Attorney General
3 BRENT O. JEX
Deputy Attorney General
4 State Bar No. 235261
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7864
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12
13
14 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 77/21-3532

15 **A & A ALL PRO AUTO REPAIR;**
16 **IGNACIO ANDRADE, OWNER**
439 Mercey Springs Road
Los Banos, CA 93635

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17 **Automotive Repair Dealer Registration**
18 **No. ARD 227686**
Smog Check Station License
19 **No. RC 227686**
Lamp Station License, Class A,
20 **No. LS 227686**
Brake Station License, Class C,
21 **No. BS 227686**

22 Respondent.

23
24
25 **PARTIES**

26 1. Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke
27 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair
28 (Bureau), Department of Consumer Affairs.

1 **LICENSE HISTORY**

2 **Automotive Repair Dealer Registration**

3 2. In or around 2003, the Bureau issued Automotive Repair Dealer Registration Number
4 ARD 227686 (registration) to Ignacio Andrade, as owner of A & A All Pro Auto Repair
5 (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all
6 times relevant to the charges brought herein and will expire on May 31, 2022, unless renewed.

7 **Smog Check Station License**

8 3. On or about October 4, 2007, the Bureau issued Smog Check Station License Number
9 RC 227686 (station license) to Respondent. The Smog Check Station License was in full force
10 and effect at all times relevant to the charges brought herein and will expire on May 31, 2022,
11 unless renewed.

12 **Lamp Station License**

13 4. On or about September 7, 2010, the Bureau issued Lamp Station License, Class A,
14 Number LS 227686 to Respondent. The Lamp Station License was suspended on December 19,
15 2019, and expired on May 31, 2020.

16 **Brake Station License**

17 5. On or about September 7, 2010, the Bureau issued Brake Station License, Class C,
18 Number BS 227686 to Respondent. The Brake Station License was suspended on December 19,
19 2019, and expired on May 31, 2020.

20 **DISCIPLINARY HISTORY**

21 6. In a disciplinary action entitled "*In the Matter of the Accusation Against: A & A Auto*
22 *Body; Ignacio Andrade, Owner and A & A All Pro Auto Repair; Ignacio Andrade, Owner,*" Case
23 No. 77/17-15844, the Director of the Department of Consumer Affairs (Director), for the Bureau,
24 issued a Decision effective September 26, 2019, in which Respondent's Automotive Repair
25 Dealer Registration, Smog Check Station License, Lamp Station License, Class A, and Brake
26 Station License, Class C, were revoked. However, the revocations were stayed and Respondent's
27 Automotive Repair Dealer Registration, Smog Check Station License, Lamp Station License,
28 Class A, and Brake Station License, Class C, were placed on probation for a period of five (5)

1 years with certain terms and conditions.

2 JURISDICTION FOR ACCUSATION

3 7. This Accusation is brought before the Director of the Department of Consumer
4 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
5 All section references are to the Business and Professions Code (Code) unless otherwise
6 indicated.

7 8. Code section 118(b), states:

8 The suspension, expiration, or forfeiture by operation of law of a license
9 issued by a board in the department, or its suspension, forfeiture, or
10 cancellation by order of the board or by order of a court of law, or its surrender
11 without the written consent of the board, shall not, during any period in which
12 it may be renewed, restored, reissued, or reinstated, deprive the board of its
13 authority to institute or continue a disciplinary proceeding against the licensee
14 upon any ground provided by law or to enter an order suspending or revoking
15 the license or otherwise taking disciplinary action against the licensee on any
16 such ground.

17 9. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
18 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
19 against an automotive repair dealer or to render a decision temporarily or permanently
20 invalidating (suspending or revoking) a registration.

21 10. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
22 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
23 Automotive Repair Act.

24 11. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a
25 license by operation of law or by order or decision of the Director or a court of law, or the
26 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
27 disciplinary proceedings.

28 12. 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.

13. Health and Safety Code section 44072.2 of the Health and Safety Code 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:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] 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.

14. Health & Safety Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

15. Health and Safety Code section 44072.8 of the Health and Safety Code states:

When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

STATUTORY PROVISIONS

16. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making 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.

(2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

• • •

(4) Any other conduct that constitutes fraud.

...

1 (6) Failure in any material respect to comply with the provisions of this
2 chapter or regulations adopted pursuant to it.

3 17. Code section 9884.8 states:

4 All work done by an automotive repair dealer, including all warranty work,
5 shall be recorded on an invoice and shall describe all service work done and parts
6 supplied. Service work and parts shall be listed separately on the invoice, which shall
7 also state separately the subtotal prices for service work and for parts, not including
8 sales tax, and shall state separately the sales tax, if any, applicable to each. If any
9 used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that
10 fact. If a part of a component system is composed of new and used, rebuilt or
11 reconditioned parts, that invoice shall clearly state that fact. The invoice shall include
12 a statement indicating whether any crash parts are original equipment manufacturer
13 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
14 of the invoice shall be given to the customer and one copy shall be retained by the
15 automotive repair dealer.

16 18. Code section 9884.9 states, in pertinent part:

17 (a) The automotive repair dealer shall give to the customer a written estimated
18 price for labor and parts necessary for a specific job, except as provided in
19 subdivision (e). No work shall be done and no charges shall accrue before
20 authorization to proceed is obtained from the customer. No charge shall be made for
21 work done or parts supplied in excess of the estimated price, or the posted price
22 specified in subdivision (e), without the oral or written consent of the customer that
23 shall be obtained at some time after it is determined that the estimated or posted price
24 is insufficient and before the work not estimated or posted is done or the parts not
25 estimated or posted are supplied. Written consent or authorization for an increase in
26 the original estimated or posted price may be provided by electronic mail or facsimile
27 transmission from the customer. The bureau may specify in regulation the procedures
28 to be followed by an automotive repair dealer if an authorization or consent for an
increase in the original estimated price is provided by electronic mail or facsimile
transmission. If that consent is oral, the dealer shall make a notation on the work
order of the date, time, name of person authorizing the additional repairs, and
telephone number called, if any, together with a specification of the additional parts
and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on
the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to
an acknowledgment of notice and consent, if there is an oral consent of the customer
to additional repairs, in the following language:

I acknowledge notice and oral approval of an increase in the original estimated
price.

(signature or initials)

Nothing in this section shall be construed as requiring an automotive repair
dealer to give a written estimated price if the dealer does not agree to perform the

1 requested repair.

2 19. Code section 9889.3 states, in pertinent part:

3 The director may suspend, revoke, or take other disciplinary action against a
4 license as provided in this article [Article 7 (commencing with section 9889.1) of the
Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

5 (a) Violates any section of the Business and Professions Code which relates to
6 his or her licensed activities.

7 ...

8 (c) Violates any of the regulations promulgated by the director pursuant to this
chapter.

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

10 ...

11 (h) Violates or attempts to violate the provisions of this chapter relating to the
particular activity for which he or she is licensed....

12 20. Code section 9887.1 states, in pertinent part:

13 The director shall have the authority to issue licenses for official lamp and
14 brake adjusting stations and shall license lamp and brake adjusters. The licenses shall
be issued in accordance with this chapter and regulations adopted by the director
15 pursuant thereto . . . Licenses may be renewed upon application and payment of the
renewal fees if the application for renewal is made within the 30-day period prior to
16 the date of expiration. Persons whose licenses have expired shall immediately cease
the activity requiring a license....

17 **REGULATIONS**

18 21. California Code of Regulations, title 16 (CCR), section 3356, states, in pertinent part:

19 ...

20 (b) The invoice shall show the automotive repair dealer's registration number
and the corresponding business name and address as shown in the Bureau's records.

21 ...

22 (j) The automotive repair dealer shall give the customer a legible copy of the
invoice.

23 22. CCR section 3371, states:

24 No dealer shall publish, utter, or make or cause to be published, uttered, or
25 made any false or misleading statement or advertisement which is known to be false
or misleading, or which by the exercise of reasonable care should be known to be
26 false or misleading. Advertisements and advertising signs shall clearly show the
following:

27 (a) Firm Name and Address. The dealer's firm name and address as they
28 appear on the State registration certificate as an automotive repair dealer; and

1 (b) Telephone Number. If a telephone number appears in an advertisement or
2 on an advertising sign, this number shall be the same number as that listed for the
3 dealer's firm name and address in the telephone directory, or in the telephone
4 company records if such number is assigned to the dealer subsequent to the
5 publication of such telephone directory.

6 23. CCR, section 3373, states:

7 No automotive repair dealer or individual in charge shall, in filling out an
8 estimate, invoice, or work order, or record required to be maintained by section
9 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or
10 information which will cause any such document to be false or misleading, or where
11 the tendency or effect thereby would be to mislead or deceive customers,
12 prospective customers, or the public.

13 COST RECOVERY

14 24. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
18 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
19 included in a stipulated settlement.

20 UNDERCOVER OPERATION: 2007 DODGE CHARGER

21 25. In or around March 2021, a Bureau representative prepared and documented a 2007
22 Dodge for an undercover operation. After verifying the proper operation of the vehicle, a Bureau
23 representative introduced the following malfunction to the 2007 Dodge: open/broken ground wire
24 for the Bank1 Sensor 1 (B1S1) Heated Oxygen Sensor (HO2S) ground circuit located at terminal
25 "G109". Ground terminal "G109" is located under the hood near the vehicle's passenger/right
26 front shock tower. The broken wire causes the Malfunction Indicator Lamp (MIL) to illuminate
27 and a Diagnostic Trouble Code (DTC) P0032 "O2 Sensor 1/1 Heater Circuit High" to be stored in
28 the vehicle's Electronic Control Module (ECM). To correct the malfunction, it was only
necessary to repair the broken/open wire at the terminal G109 location or the wire overlay of the
ground circuit at the B1S1 connector.

29 26. On or about March 16, 2021, a Bureau undercover operator (operator) using an alias
took the Bureau-documented 2007 Dodge to Respondent's facility and requested a diagnosis for

1 an illuminated MIL. The operator was told the cost to diagnose the MIL would be \$75.00. The
2 operator signed Repair Estimate #018405. Repair Estimate #018405 listed the business name as A
3 & A All Pro Auto Repair, Inc., which does not match Bureau record of A & A All Pro Auto
4 Repair. Repair Estimate #018405 failed to list an odometer reading.

5 27. On or about March 23, 2021, the operator spoke to a representative of the facility to
6 check on the status of the 2007 Dodge. The representative informed the operator that they had
7 installed an oxygen sensor from an automotive parts retailer; however, that did not fix the
8 illuminated MIL. The facility had ordered an oxygen sensor from a dealership to see if that would
9 correct the illuminated MIL.

10 28. On or about March 24, 2021, the operator spoke to a representative of the facility to
11 check the status of the 2007 Dodge. The representative informed the operator that two sensors
12 and a powertrain control module (PCM) were needed to correct the illuminated MIL and the cost
13 would be \$1,687.86 with a \$400.00 deposit to be provided before they ordered the PCM. The
14 operator authorized the repairs.

15 29. On or about March 25, 2021, the operator entered the facility and spoke to a facility
16 representative. The operator paid the \$400.00 deposit and was provided with a receipt. The
17 receipt showed that the BAR number for A & A All Pro Auto Repair was 335327D, which does
18 not match the Bureau record BAR number of 227686.

19 30. On or about April 19, 2021, the operator received a telephone call from the facility
20 and was informed that the 2007 Dodge was ready to be picked up. On or about April 20, 2021,
21 the operator entered the facility and paid the balance of the repair in the amount of \$1,287.86. The
22 operator was provided with Repair Invoice #018405. Repair Invoice #018405 listed the business
23 name as A & A All Pro Auto Repair, Inc., which does not match Bureau record of A & A All Pro
24 Auto Repair.

25 31. Upon return to the Bureau, Vehicle 1 was re-inspected. The Bureau representative
26 concluded that the vehicle's ECM was scanned, and no DTC's were present and that all readiness
27 monitors except the Fuel Evaporative monitor and Exhaust Gas Recirculation had run to
28 completion. The vehicle's ECM was reset and road tested. The vehicle drove normally and the

monitors for the O2 Heater circuits had completed. The ECM and both upstream and downstream HO2S's were replaced, although that was not needed to correct the malfunction. The broken wire at the terminal "G109" location was not repaired. A wire repair/overlay had been installed into the harness side of the B1S1 HO2S connector and grounded to the driver/left front shock tower, although it was only necessary to repair the broken/open wire at the terminal G109 location or the wire overlay of the ground circuit at the B1S1 connector. The wire overlay of the ground circuit at the B1S1 connector was not disclosed on Repair Invoice #018405.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

32. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading when Respondent stated to the operator that two oxygen sensors and a PCM were needed to correct the illuminated MIL.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

33. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that on or about April 20, 2021, Respondent committed an act that constitutes fraud when Respondent obtained payment from the operator for two oxygen sensors and a PCM when they were not needed to correct the illuminated MIL.

THIRD CAUSE FOR DISCIPLINE

(Failure to Record Odometer Reading)

34. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(2), in that on or about March 16, 2021, Respondent failed to document the Bureau's 2007 Dodge odometer reading on Repair Estimate #018405.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Code)**

3 35. Respondent's registration is subject to disciplinary action pursuant to Code section
4 9884.7(a)(6), in that Respondent failed to comply with provisions of that Code in the following
5 material respects:

6 **a. Code Section 9884.8:**

7 i. Respondent recorded the business name, A & A Auto All Pro Auto
8 Repair Inc., which does not match Bureau records of A & A All Pro Auto Repair, on Repair
9 Estimate #018405 dated March 16, 2021, and Repair Invoice #018405 finalized April 20, 2021.

10 ii. Respondent recorded their BAR number as 0335327D, when the correct
11 BAR number is 227686 on the receipt dated March 25, 2021.

12 **b. Code Section 9884.9, subdivision (a):** Respondent failed to disclose the wire
13 overlay of the ground circuit at the B1S1 connector on Repair Invoice #018405 finalized April
14 20, 2021.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations)**

17 36. Respondent's registration is subject to disciplinary action pursuant to Code section
18 9884.7, subdivision (a)(6), in that Respondent failed to comply with provisions of California
19 Code of Regulations, title 16, in the following material respects:

20 **a. Code Section 3356, subdivision (b):**

21 i. Respondent recorded the business name, A & A Auto All Pro Auto
22 Repair Inc., which does not match Bureau records of A & A All Pro Auto Repair, on Repair
23 Estimate #018405 dated March 16, 2021, and Repair Invoice #018405 finalized April 20, 2021.

24 ii. Respondent recorded their BAR number as 0335327D, when the correct
25 BAR number is 227686 on the receipt dated March 25, 2021.

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27 ///

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 37. Respondent's station license is subject to disciplinary action pursuant to Code section
4 9889.3, subdivision (d), in that on or about April 20, 2021, Respondent committed an act that
5 constitutes fraud when Respondent obtained payment from the operator for two oxygen sensors
6 and a PCM when they were not needed to correct the illuminated MIL.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Code)**

9 38. Respondent's station license is subject to disciplinary action pursuant to Code section
10 9889.3, subdivisions (a) and (h), in that Respondent violated the provisions of Code sections
11 9884.8, and 9884.9 subdivision (a) relating to its licensed activities, as set forth in paragraph 35
12 above.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations)**

15 39. Respondent's station license is subject to disciplinary action pursuant to Code section
16 9889.3, subdivision (c), in that Respondent failed to comply with the provisions of California
17 Code of Regulations, title 16, sections 3356, subdivision (b), as set forth in paragraph 36 above.

18 **NINTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 40. Respondent's brake and lamp station licenses are subject to disciplinary action
21 pursuant to Code section 9889.3, subdivision (d), in that on or about April 20, 2021, Respondent
22 committed an act that constitutes fraud when Respondent obtained payment from the operator for
23 two oxygen sensors and a PCM when they were not needed to correct the illuminated MIL.

24 **TENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with the Code)**

26 41. Respondent's brake and lamp station licenses are subject to disciplinary action
27 pursuant to Code section 9889.3, subdivisions (a) and (h), in that Respondent violated the
28 provisions of Code sections 9884.8, and 9884.9 subdivision (a) relating to its licensed activities,

as set forth in paragraph 35 above.

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

42. Respondent's brake and lamp station licenses are subject to disciplinary action pursuant to Code section 9889.3, subdivision (c), in that Respondent failed to comply with the provisions of California Code of Regulations, title 16, sections 3356, subdivision (b), as set forth in paragraph 36 above.

JURISDICTION FOR PETITION TO REVOKE PROBATION

43. At all times after the effective date of the Decision, Condition 7 states:

If Respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

44. Respondent's probation is subject to revocation, in that Respondent did not comply with the terms and conditions of Respondent's probation, as more particularly set forth below.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey all Laws)

45. At all times after the effective date of the Decision, Condition 1 states:

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.

46. Respondent's probation is subject to revocation in that Respondent failed to comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs, as set forth in paragraphs 25 through 42 above.

SECOND CAUSE TO REVOKE PROBATION

(Maintain a Valid License)

47. At all times after the effective date of Respondent's probation, Condition 8 states:

Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If Respondent's registration or license is expired at

1 the time the decision becomes effective, the registration or license must be renewed
2 by Respondent within 30 days of that date. If Respondent's registration or license
3 expires during a term of probation, by operation of law or otherwise, then upon
4 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.

5 48. Respondent's probation is subject to revocation in that Respondent failed to comply
6 with Probation Condition 8, above, when during the undercover operation, it was found that
7 Respondent failed to maintain current and active Brake and Lamp Station Licenses. In fact, both
8 licenses were suspended on November 19, 2019, and expired on May 31, 2020.

9 **OTHER MATTERS**

10 49. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke,
11 or place on probation the registrations for all places or business operated in this state by Ignacio
12 Andrade, upon a finding that he has, or is, engaged in a course of repeated and willful violations
13 of the laws and regulations pertaining to an automotive repair dealer.

14 50. Pursuant to Health and Safety Code section 44072.8, if the Smog Check Station
15 License issued to Ignacio Andrade is revoked or suspended, any additional licenses issued under
16 Chapter 5 of Part 5 of Division 26 of the HSC in the name of said licensee may be likewise
17 revoked or suspended by the director.

18 51. Pursuant to Code section 9889.9, if the Lamp Station License issued to Ignacio
19 Andrade is revoked or suspended, any additional licenses issued under Articles 5 and 6 of [the
20 Automotive Repair Act] in the name of the licensee may be likewise revoked or suspended by the
21 director.

22 52. Pursuant to Code section 9889.9, if the Brake Station License issued to Ignacio
23 Andrade is revoked or suspended, any additional licenses issued under Articles 5 and 6 of [the
24 Automotive Repair Act] in the name of the licensee may be likewise revoked or suspended by the
25 director.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
3 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of the
4 Department of Consumer Affairs issue a decision:

5 1. Revoking the probation that was granted by the Bureau in Case No. 77/17-15844 and
6 imposing the disciplinary order that was stayed thereby revoking Automotive Repair Dealer
7 Registration No. ARD 227686, Smog Check Station License No. RC227686, Lamp Station
8 License, Class A, No. LS 227686, and Brake Station License, Class C, No. BS 227686, issued to
9 Ignacio Andrade, owner of A & A All Pro Auto Repair;

10 2. Revoking or suspending Automotive Repair Dealer Registration No. ARD 227686,
11 issued to Ignacio Andrade, owner of A & A All Pro Auto Repair;

12 3. Revoking or suspending Smog Check Station License No. RC 227686, issued to
13 Ignacio Andrade, owner of A & A All Pro Auto Repair;

14 4. Revoking or suspending Lamp Station License, Class A, No. LS 227686, issued to
15 Ignacio Andrade, owner of A & A All Pro Auto Repair;

16 5. Revoking or suspending Brake Station License, Class C, No. BS 227686, issued to
17 Ignacio Andrade, owner of A & A All Pro Auto Repair; and,

18 6. Taking such other and further action as deemed necessary and proper.
19

20
21 DATED: As of Digital Signature Date

22 **Dorais,**
23 **Patrick@DCA**
24 **PATRICK DORAIS**
25 **Chief**
26 **Bureau of Automotive Repair**
27 **Department of Consumer Affairs**
28 **State of California**
Complainant

Digitally signed by Dorais,
Patrick@DCA
Date: 2021.10.14 15:13:43
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