BEFORE THE DIRECTOR OF THE

DEPARTMENT OF CONSUMER AFFAIRS

BUREAU OF AUTOMOTIVE REPAIR

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHIRITH YU dba STOCKTON AUTO CARE

1025 East Park St.

Stockton, CA 95205

Automotive Repair Dealer Registration No. ARD 240289

Smog Check Station License No. RC 240289

Brake Station License No. BS 240289, Class A

Lamp Station License, CA LS 240289, Class A

PHIRITH YU

5534 Governor Circle

Stockton, CA 95210

Smog Check Inspector License No. EO 147355

Smog Check Repair Technician License No. EI 147355

Brake Adjuster License No. BA 147355, Class C

Lamp Adjuster License No. LA 147355, Class A

Respondents.

Case No. 77/21-16187

OAH No. 2023040430

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 November 22, 2023.

IT IS SO ORDERED this 11 day of October, 2023.

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

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

In the Matter of the Accusation Against:

PHIRITH YU, dba STOCKTON AUTO CARE, Respondent

Agency Case No. 77/21-16187

OAH Nos. 2023030430

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 30, 2023, by videoconference from Sacramento, California.

Kevin W. Bell, Deputy Attorney General, represented Patrick Dorais (complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.

Saveel Khan, Attorney at Law, represented Phirith Yu (Yu), individually and doing business as (dba) Stockton Auto Care, who was present.

Evidence was received, the record closed, and the matter submitted for decision on August 30, 2023.

FACTUAL FINDINGS

Background

1. In 2003, the Bureau issued respondent Brake Adjuster (BA) License No. BA 147355. The license will expire on April 30, 2026, unless renewed or revoked.

2. In 2004, the Bureau issued respondent Lamp Adjuster (LA) License No. LA 147355. The license will expire on April 30, 2024, unless renewed or revoked.

3. In 2005, the Bureau issued respondent Advanced Emission Specialist Technician (EA) License No. EA 147355. The license was due to expire on April 30, 2014. Effective November 15, 2013, at respondent's election, the license was renewed as Smog Check Inspector License No. EO 147355, and Smog Check Repair Technician License No. EI 147355. Both licenses will expire on April 30, 2024, unless renewed or revoked.

4. In 2005, the Bureau issued respondent, dba Stockton Auto Care, Automotive Repair Dealer (ARD) Registration No. ARD 240289. On May 21, 2009, the Bureau issued respondent, dba Stockton Auto Care Brake Station (BS) License No. 240289 and Lamp Station (LS) License No. 240289. On June 8, 2009, the Bureau issued respondent, dba Stockton Auto Care Smog Station (RC) License No. RC 240289. All three licenses and the ARD registration will expire on June 30, 2024, unless renewed or revoked.

5. On August 8, 2017, the Bureau certified Stockton Auto Care as a STAR Station. That certification remains active until Performance Smog's ARD registration and/or smog check station license is revoked, cancelled, or becomes delinquent, or the certification is suspended.

6. On November 10, 2022, complainant signed and thereafter filed the Accusation. The Accusation alleges 23 causes for discipline against respondent, individually and dba Stockton Auto Care, related to two undercover operations. Respondent timely filed a Notice of Defense. The matter was set for evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Undercover Operations

7. The Bureau is responsible for regulating the automotive repair and smog check industry. To ensure that licensees comply with the provisions of the Automotive Repair Act, the Bureau occasionally conducts operations in which an undercover Bureau employee brings a state-owned vehicle to a licensed facility for inspection or repair.

2007 Pontiac Grand Prix

8. Christopher B. Norris is employed by the Bureau as a Program Representative I in the Bureau's Forensic Documentation Laboratory (Documentation Lab). His duties include documenting vehicles for Bureau undercover operations. From May 18, 2021, through May 28, 2021, he documented the Bureau's 2007 Pontiac Grand Prix for brake inspection. His primary references were the 2007 Pontiac Grand Prix Service Manual, ALLDATA online service information (ALLDATA), Mitchell 1 PRODEMAND online vehicle information, the California Brake Adjuster Handbook, and the manufacturer specifications stamped on the brake rotors.

9. Mr. Norris inspected the Pontiac's brake system and found it to be in good working condition. He road tested the vehicle and it performed normally. Mr. Norris then machined the right front brake rotor to an undersized thickness of 28.94

millimeters (mm). The manufacturer's discard thickness specification for the front brake rotors is 30.7 mm. Mr. Norris also machined the left rear brake rotor to an undersized thickness of 11.81 mm. The manufacturer's discard thickness specification for the rear brake rotors is 12.5 mm. With the right front and left rear brake rotors machined below the manufacturer's discard specifications, the 2007 Pontiac was not in a condition to pass a brake inspection.

10. Matthew Lara is employed by the Bureau as a Program Representative II and testified at hearing. He is responsible for investigating consumer complaints and conducting undercover operations to verify compliance with the Automotive Repair Act.

11. Khosrov Matsoyan has been a licensed brake and lamp adjuster since 2011. He is employed by the Bureau as a Program Representative I and participates in the Bureau's undercover operations. Mr. Matsoyan also testified at hearing. By virtue of his training and licensure, Mr. Matsoyan knows that during a lamp inspection, the vehicle lights must be turned on and the technician must use an optical aiming device to ensure that the headlights are properly aligned. During a brake inspection, the wheels must be removed so the technician can inspect and measure the brake pads and rotors. The vehicle must also be driven by the technician during the inspection.

12. On December 2, 2021, Mr. Lara instructed Mr. Matsoyan to drive the 2007 Pontiac to Stockton Auto Care and request brake, lamp, and smog inspections. When Mr. Matsoyan arrived, respondent asked him to write his name and information on a blank notepad. He did not provide Mr. Matsoyan with a written estimate for the inspections, or a copy of the information Mr. Matsoyan wrote on the notepad. Mr. Matsoyan stayed with the vehicle the entire time respondent was inspecting it. Respondent performed a smog inspection but failed to perform the brake or lamp

inspections. Respondent never drove the Pontiac, and the smog inspection was performed outside the facility. Mr. Matsoyan paid respondent $120 for the inspections, and respondent issued Mr. Matsoyan certificates of compliance for all three inspections.

2003 HONDA PILOT

13. Robert Brasher is employed by the Bureau as a Program Representative II in the Documentation Lab. Like Mr. Norris, his duties include documenting vehicles for Bureau undercover operations. From March 10, 2022, through March 21, 2022, he documented the Bureau's 2003 Honda Pilot for brake, lamp, and smog inspections. His primary reference sources were the vehicle's Emission Control Information Label, Motor 2022 Emission Control Systems Application Guide, Mitchell 2022 Emission Control Application Guide, Volume 2, 2003 Honda Factory Service Manual, ALLDATA Online Vehicle Diagnostic and Repair Information, ProDemand Online Vehicle Diagnostic and Repair Information, the BAR Handbook for Brake Adjusters, and the BAR Handbook for Lamp Adjusters.

14. Mr. Brasher inspected the Honda's brake system and found it to be in good working condition. He road tested the vehicle and it performed normally. He performed an On-Board Diagnostic Inspection System (OIS) California Smog Check Inspection and obtained a Vehicle Inspection Report indicating that the vehicle passed. Finally, he inspected the lamp system on the vehicle in accordance with the BAR Handbook for Lamp Adjusters. The lamp system passed the inspection as outlined in the handbook.

15. Mr. Brasher then machined the left front brake rotor to an undersized thickness of 25.20 mm. The manufacturer's discard thickness brake specification for

the front brake rotors is 26 mm. He also machined the right rear brake rotor to an undersized thickness of 8.41 mm. The manufacturer's discard thickness specification for the rear brake rotors is 9 mm. With the left front and right rear brake rotors machined below the manufacturer's discard specifications, the 2003 Honda was not in a condition to receive a California Brake Certificate of Compliance.

16. Next, Mr. Brasher created a condition in the headlight system of the Honda. He adjusted the right vertical headlamp adjuster, so the right low beam was 10 inches below the vertical line specification. With the right low beam headlight being improperly adjusted, the Honda was not in a condition to receive a California Lamp Certificate of Compliance.

17. On April 18, 2022, Mr. Lara instructed Mr. Matsoyan to drive the 2003 Honda to Stockton Auto Care and request brake, lamp, and smog inspections. When Mr. Matsoyan arrived and requested the three inspections, respondent did not provide him with a written estimate for the inspections. After the smog inspection, Mr. Matsoyan was asked to sign an invoice but was not provided a copy of it. Mr. Matsoyan stayed with the vehicle the entire time respondent was inspecting it. Respondent performed a smog inspection but failed to perform the brake or lamp inspections. Respondent never drove the Honda, and the smog inspection was performed outside the facility. Mr. Matsoyan paid respondent $120 for the inspections, and respondent issued Mr. Matsoyan certificates of compliance for all three inspections.

CERTIFICATES OF COMPLIANCE

18. Respondent signed the certificates of compliance he issued to Mr. Matsoyan for the brake inspections he did not perform during the two undercover

operations. On each certificate, he represented that the following were in satisfactory condition: (1) parking brake; (2) lining and shoes; (3) drums and rotors; (4) warning device system; (5) antilock brake system; and (6) connections. He also represented that he road-tested the vehicle, and that it could stop within 17 feet when being driven at 20 miles per hour.

19. Respondent also signed the certificates of compliance he issued to Mr. Matsoyan for the lamp inspections he did not perform during the two undercover operations. On each certificate, he represented that the following were in satisfactory condition: (1) clearance lamps; (2) lamp type signal; (3) warning lamps; (4) rear lamps; (5) stop lamps; (6) license plate lamps; and (7) back-up lamps.

20. The following language appears above respondent's signature on all the certificates of compliance he issued to Mr. Matsoyan:

> All items checked above are of an approved type and I have performed the applicable inspection, adjustment, or repair as specified by the Bureau of Automotive Repair and the vehicle manufacturer, and in accordance with Title 13 and Title 16 of the California Code of Regulations, the Vehicle Code, and the Business and Professions Code. I hereby certify under penalty under the laws of the State of California that the above is true and correct.

Respondent's Evidence

RESPONDENT'S TESTIMONY

21. Respondent testified at hearing. He is 53 years old and resides in Stockton. He has owned Stockton Auto Care since 2003 and is presently the only person working at the business. His gross income ranges from $3,000 to $5,000 per month. He is married and has four children he supports financially. He also supports his elderly parents, who live in his home.

22. Respondent acknowledges he failed to provide Mr. Matsoyan with a copy of the work order for the inspection of the 2007 Pontiac on December 2, 2021. He also acknowledges he failed to provide a receipt for the work that he performed. Respondent turned the vehicle lights on and checked to make sure none of the lights were cracked. However, he admits he did not use an optical aiming device to check the alignment of the headlights. He believes he used a pedal accelerator tool to depress the brakes to ensure the brake lights were working. Respondent admits he did not remove the wheels to visually inspect and measure the brake rotors.

23. Respondent acknowledges he failed to provide Mr. Matsoyan with an invoice for the inspection of the 2003 Honda on April 18, 2022. He believes he provided Mr. Matsoyan with a written estimate for the costs to perform the inspections but was unable to provide a copy of the estimate at hearing. He believes he again used a pedal accelerator tool to depress the brakes to ensure the brake lights were working. Respondent admits that he failed to remove the wheels to visually inspect and measure the brake rotors.

24. Respondent acknowledges he signed the certificates of compliance under penalty of perjury for inspections that he did not properly perform. On both

occasions, he admits that "corners were cut that should not have been cut." He attributes this to being the only technician working at the time of each inspection. Nonetheless, he is committed to ensuring similar violations do not occur in the future.

CHARACTER WITNESSES

25. Scott Cochran is a retired peace officer and testified on respondent's behalf at hearing. He met respondent approximately 10 years ago and they have been friends ever since. He has taken his vehicle to Stockton Auto Care on multiple occasions and has referred others as well. Somahuon Khaman also testified on respondent's behalf. He worked for respondent from 2003 to 2021. He never performed lamp or smog inspections. He performed work on brakes but never signed off on a brake inspection.

26. Complainant re-called Mr. Matsoyan as a rebuttal witness. He testified that respondent never used a pedal accelerator tool to depress the brakes on the Pontiac or the Pilot during the inspections at issue here.

Analysis

27. Complainant established by a preponderance of the evidence that on December 2, 2021, and April 18, 2022, respondent failed to provide Mr. Matsoyan with a written estimate of the costs to perform the inspections or an invoice detailing the work performed. Complainant also established that respondent committed acts of fraud and made statements which he knew to be untrue or misleading when he certified under penalty of perjury that he performed brake and lamp inspections of the Bureau's 2007 Pontiac Grand Prix and 2003 Honda Pilot. Issuing the certificates of compliance for the brake inspections amounts to gross negligence, in that the brake rotors on both vehicles were below manufacturer specifications. Respondent violated

multiple provisions of the Business and Professions Code and California Code of Regulations. He acknowledges wrongdoing and vows not to repeat it.

Appropriate Discipline

28. The Bureau has adopted Guidelines for Disciplinary Orders and Terms of Probation (Guidelines) to be considered when determining the appropriate level of discipline to impose against a licensee who violates the Automotive Repair Act and its regulations. Multiple violations or multiple instances of the same violations should be taken into consideration when determining orders.

29. The maximum order for each individual violation is revocation of the applicable registration or licenses along with an order for recovery of the Bureau's reasonable costs of investigation and enforcement. The recommended order for a violation of Business and Professions Code section 9884.7, subdivision (a)(1), is revocation stayed with three years' probation. The recommended order for violations of Business and Professions Code sections 9884.7 subdivisions (a)(4) and (a)(5), and Health and Safety Code section 44072.2, subdivision (d), is revocation stayed with five years' probation. The recommended order for all other causes for discipline proven at hearing is revocation stayed with two years' probation.

30. In determining the appropriate level of discipline to impose in a particular case, the following relevant criteria should be considered: (1) prior warnings or a prior disciplinary record with the Bureau; (2) evidence of attempts to intimidate a consumer; (3) evidence that the unlawful act was of a pattern or practice; (4) evidence of any other conduct constituting fraud or gross negligence; (5) evidence of voluntary retraining; (6) absence of prior disciplinary action; (7) evidence of no loss to a consumer and no damage to a consumer's property (undercover vehicles are viewed

the same as consumer property; and (8) evidence of any other conduct which would constitute a factor in mitigation.

31. Respondent has no prior disciplinary record. No consumer was harmed by his misconduct and no property was damaged. Respondent admitted wrongdoing in his testimony at hearing, and there was no evidence presented of conduct constituting fraud or gross negligence other than the two occasions alleged in the Accusation.

32. However, respondent clearly committed acts of dishonesty, fraud and gross negligence on those occasions. As such, there is evidence that the unlawful acts were part of a pattern or practice. These were not instances where respondent performed an inspection incorrectly, but rather instances where he failed to perform an inspection at all. While respondent admitted wrongdoing at hearing, his explanation that "corners were cut that should not have been cut" is insufficient to explain why the same mistakes were made in the same fashion on multiple occasions. When all the evidence is considered, it would be against the public interest to allow respondent to retain his ARD registration and licenses, without restrictions to protect the public.

Costs

33. The Bureau may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 125.3, subd. (a).) Complainant here incurred a total of $5,999.40 in investigation costs. The investigation costs are supported by a Declaration of Matthew Lara, dated May 3, 2022, which is accompanied by documents describing the general tasks performed, the time spent on each task, and the method of calculating the costs.

34. Complainant also incurred a total of $15,731.25 in enforcement costs. The enforcement costs are supported by a Declaration of Prosecution Costs: Declaration of Kevin W. Bell, dated August 30, 2023, which is accompanied by documents describing the general tasks performed, the time spent on each task, and the method of calculating the costs. Complainant's request for costs is discussed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. The Automotive Repair Act, set forth in Business and Professions Code section 9880, et seq., governs the registration, licensing, and discipline of Automotive Repair Dealers. The Legislature has expressly declared that protecting the public shall be the Bureau's highest priority when exercising these functions, and that "whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 9880.3.)

Burden and Standard of Proof

2. In revocation proceedings, the Bureau must prove that the charges in the Accusation are true and must do so by a preponderance of the evidence. (*Imports Performance et al. v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) Respondent has the burden of establishing any affirmative defenses.

Applicable Statutes and Regulations

3. Business and Professions Code section 9884.7 provides, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may . . . invalidate temporarily or permanently, 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 could be known, to be untrue or misleading.

[¶] . . . [¶]

(4) Any other conduct which constitutes fraud.

(5) Conduct constituting gross negligence.

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

4. Business and Professions Code 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. 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.

5. Business and Professions Code section 9889.16 provides:

Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the [B]ureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

6. An automotive repair dealer is required to give the customer a written estimate of the cost of labor and parts necessary for any work requested. (Bus. & Prof.

Code, § 9884.9, subd. (a).) No amount in excess of the written estimate may be charged for labor and parts provided without prior approval of the customer. (*Ibid.*)

7. Business and Professions Code section 9889.3 provides, 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:
>
> (a) Violates any section of the Business and Professions Code that relates to his or her licensed activities.
>
> [¶] . . . [¶]
>
> (c) Violates any of the regulations promulgated by the director pursuant to this chapter.
>
> (d) Commits any act of dishonesty, fraud, or deceit whereby another is injured.
>
> [§] . . . [§]
>
> (h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

8. Business and Professions Code section 9889.7 states:

> The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee shall

not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against such license, or to render a decision suspending or revoking such license.

9. California Code of Regulations, title 16, section 3305, provides, in pertinent part:

(a) All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable:

(1) Vehicle Manufacturers' current standards, specifications and recommended procedures, as published in the manufacturers' vehicle service and repair manuals.

(2) Current standards, specifications, procedures, directives, manuals, bulletins and instructions issued by vehicle and equipment or device managers.

(3) Standards, specifications and recommended procedures found in current industry-standard reference manuals and periodicals published by nationally recognized repair information providers.

(4) The bureau's Handbook for Brake Adjusters and Stations, February 2003, which is hereby incorporated by reference.

(5) The bureau's Handbook for Lamp Adjusters and Stations, February 2003, which is hereby incorporated by reference.

10. Pursuant to California Code of Regulations, title 16, section 3316, subdivision (d)(2), "[w]here all the lamps, lighting equipment, and related electrical systems on a vehicle have been inspected and found to be in compliance with all requirements of the Vehicle Code and bureau regulations, the certificate shall certify that the entire system meets all of those requirements."

11. Pursuant to California Code of Regulations, title 16, section 3321, subdivision (c)(2), "[w]here the entire brake system on any vehicle has been inspected or tested and found to be in compliance with all requirements of the Vehicle Code and bureau regulations, and the vehicle has been road-tested, the certificate shall certify that the entire system meets all such requirements."

12. California Code of Regulations provides, in pertinent part:

(a) All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:

(1) 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. If the automotive repair dealer's telephone number is shown, it shall comply with the requirements of subsection (b) of Section 3371 of this chapter.

(2) The invoice shall separately list, describe, and identify all of the following:

(A) All service and repair work performed, including all diagnostic and warranty work, and the price for each described service and repair.

(B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

13. Health and Safety Code section 44072.2, subdivision (d), provides that the Bureau may discipline a licensee who "[c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured."

Cause for Discipline

2007 Pontiac Grand Prix

14. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent made

untrue or misleading statements on December 2, 2021, by certifying under penalty of perjury that he performed proper brake and lamp inspections of the Bureau's 2007 Pontiac Grand Prix, when in fact, he did not. Consequently, cause exists to discipline respondent's ADR registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

15. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent committed an act of fraud on December 2, 2021, by accepting payment to perform brake and lamp inspections of the Bureau's 2007 Pontiac Grand Prix and issuing certificates of compliance without performing the inspections. Consequently, cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4). Cause also exists to discipline respondent's brake adjuster, brake station, lamp adjuster, and lamp station licenses, pursuant to Business and Professions Code section 9889.3, subdivision (d).

16. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent committed acts constituting gross negligence on December 2, 2021, by certifying that the brake system on the Bureau's 2007 Pontiac Grand Prix was in satisfactory condition, when in fact, the right front and left rear brake rotors were below manufacturer's specifications. Consequently, cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(5).

17. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent failed to comply with the provisions of the Business and Professions Code on December 2,

2021, by: (1) failing to provide a customer with an invoice describing all work performed; (2) failing to provide a customer with a written estimate for parts and labor for brake, lamp, and smog inspections; and (3) issuing certificates indicating that the brake and lamp systems of the Bureau's 2007 Pontiac Grand Prix were in compliance with Bureau regulations or the Vehicle Code when they were not. Consequently, cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code sections 9884.7, subdivision (a)(6). Cause also exists to discipline respondent's brake adjuster, brake station, lamp adjuster, and lamp station licenses, pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h).

18. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent failed to comply with the California Code of Regulations on December 2, 2021, in that respondent: (1) failed to perform brake and lamp inspections in accordance with manufacturer standards or current standards, specifications, recommended procedures, or directives of the Bureau; (2) certified that a vehicle's lamp system was in satisfactory condition without actually inspecting it; and (3) certified that a vehicle's brake system was in satisfactory condition when in fact, it was not. Consequently, cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6). Cause also exists to discipline respondent's brake adjuster, brake station, lamp adjuster, and lamp station licenses, pursuant to Business and Professions Code section 9889.3, subdivision (c).

2003 Honda Pilot

19. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent made false statements on April 18, 2022, by certifying under penalty of perjury that he

performed proper brake and lamp inspections of the Bureau's 2003 Honda Pilot, when in fact, he did not. Consequently, cause exists to discipline respondent's ADR registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

20. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent committed an act of fraud on April 18, 2022, by accepting payment to perform brake and lamp inspections of the Bureau's 2003 Honda Pilot and issuing certificates of compliance without performing the inspections. Consequently, cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4). Cause also exists to discipline respondent's brake adjuster, brake station, lamp adjuster, and lamp station licenses, pursuant to Business and Professions Code section 9889.3, subdivision (d).

21. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent committed acts constituting gross negligence on April 18, 2022, by certifying that the brake and lamp systems on the Bureau's 2003 Honda Pilot were in satisfactory condition, when in fact, they were not. Consequently, cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(5).

22. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent failed to comply with the provisions of the Business and Professions Code on April 18, 2022, by: (1) failing to provide a customer with an invoice describing all work performed; (2) failing to provide a customer with a written estimate for parts and labor for brake,

lamp, and smog inspections; and (3) issuing certificates indicating that the brake and lamp systems of the Bureau's 2003 Honda Pilot were in compliance with Bureau regulations or the Vehicle Code when they were not. Consequently, cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6). Cause also exists to discipline respondent's brake adjuster, brake station, lamp adjuster, and lamp station licenses, pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (h).

23. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by a preponderance of the evidence that respondent failed to comply with the California Code of Regulations on April 18, 2022, in that respondent: (1) failed to perform brake and lamp inspections in accordance with manufacturer standards or current standards, specifications, recommended procedures, or directives of the Bureau; (2) certified that a vehicle's lamp system was in satisfactory condition without actually inspecting it; and (3) certified that a vehicle's brake system was in satisfactory condition when in fact, it was not. Consequently, cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6). Cause also exists to discipline respondent's brake adjuster, brake station, lamp adjuster, and lamp station licenses, pursuant to Business and Professions Code section 9889.3, subdivision (c).

24. Based on the Factual Findings and Legal Conclusions as a whole, complainant established that on December 2, 2021, and April 18, 2022, respondent committed dishonest, fraudulent, or deceitful acts by accepting payment to perform brake and lamp inspections of the Bureau's undercover vehicles and then failing to perform the inspections. However, complainant did not establish that anyone was injured by respondent's misconduct. Consequently, cause does not exist to discipline

respondent's smog check station license, smog check repair technician license, and smog check inspector license, pursuant to Health and Safety Code section 44072.2, subdivision (d).

Costs

25. The Bureau may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 125.3, subd. (a).) 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. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith in the merits of his position, whether the licensee has 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. (*Zuckerman v. Board of Chiropractic Examiners*, *supra*, 29 Cal.4th at p. 45.)

26. In this case, respondent was largely unsuccessful at getting charges dismissed or reduced at hearing. The scope of the prosecution was appropriate considering the alleged misconduct. Complainant is requesting total investigation and enforcement costs of $21,730.65. While those costs are reasonable, respondent's gross monthly income ranges between $3,000 and $5,000. He provides for his children and his elderly parents, who live in his home. Under these circumstances, reduced costs in the amount of $15,000 are ordered.

ORDER

IT IS HEREBY ORDERED that Brake Adjuster License No. BA 147355, Lamp Adjuster License No. LA 147355, Smog Check Inspector License No. EO 147355, and Smog Check Repair Technician License No. EI 147355 issued to Phirith Yu, and Automotive Repair Dealer Registration No. ARD 240289, Brake Station License Number BS 240289, Lamp Station License No. 240289, and Smog Check Station License No. RC 240289 issued to Phirith Yu, doing business as Stockton Auto Care, are REVOKED. However, the revocation is STAYED, and respondent is placed on probation for FIVE years, subject to the following terms and conditions:

1. Suspension

Brake Adjuster License No. BA 147355, Lamp Adjuster License No. LA 147355, Smog Check Inspector License No. EO 147355, and Smog Check Repair Technician License No. EI 147355 issued to Phirith Yu, and Automotive Repair Dealer Registration No. ARD 240289, Brake Station License Number BS 240289, Lamp Station License No. 240289, and Smog Check Station License No. RC 240289 issued to Phirith Yu, doing business as Stockton Auto Care, are suspended for 10 consecutive days beginning on the effective date of the Decision and Order.

2. Posting of Sign

During the period of suspension, respondent shall prominently post a sign or signs, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a location or locations open to and frequented by

customers. The location of the sign or signs shall be approved by the Bureau and shall remain posted during the entire period of actual suspension.

3. Obey All Laws

During the period of probation, respondent shall comply with all federal and state statues, regulations and rules governing all BAR registrations and licenses held by respondent.

4. 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.

5. 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 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.

6. Access to Examine Vehicles and Record

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

representatives unrestricted access to all records pursuant to Bureau laws and regulations.

7. 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.

8. 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.

9. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active registration and/or licenses with the Bureau, including any period during which suspension or probation is tolled. If respondent's registration or licenses are expired at the time the decision becomes effective, the registration or licenses 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.

10. Cost Recovery

Respondent shall pay the Bureau $15,000 for the reasonable costs of the investigation and enforcement of Case No. 77/21-16187. Respondent shall be permitted to pay these costs in a payment plan approved by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau and shall indicate on the check or money order that it is for cost recovery payment for Case No. 77/21-16187. 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.

11. Completion of Probation

Upon successful completion of probation, respondent's effected registration and/or licenses will be fully restored or reissued without restriction, if respondent meets all current requirements for registration or licensure and has paid all outstanding feels, monetary penalties, or cost recovery owed to the Bureau.

12. 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 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.

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Respondent may not petition the Director for reinstatement of the surrendered registration and/or license nor 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: September 25, 2023

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings