

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

In the Matter of the Accusation Against:

**AAAA, INC. dba AAAA AUTO REPAIR, NVART MESROPYAN
(PRESIDENT/SECRETARY/TREASURER)**

2357 West Ave I, Suite 103

Lancaster, CA 93536

Automotive Repair Dealer Registration No. ARD 276908

Smog Check Station License No. RC 276908

and

KIRAKOS M. TATOSSIAN

2036 Balment St.

Lancaster, CA 93536

Smog Check Inspector License No. EO 149827

Smog Check Repair Technician License No. EI 149827

Respondents.

Case No. 79/21-1628

OAH No. 2021070449

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 March 2, 2022.

IT IS SO ORDERED this 19th day of January, 2022.

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

**BEFORE THE
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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

AAAA, INC., DBA AAAA AUTO REPAIR,

NVART MESROPYAN (President/Secretary/Treasurer)

Automotive Repair Dealer Registration No. ARD 276908

Smog Check, Station License No. RC 276908

and

KIRAKOS M. TATOSSIAN

Smog Check Inspector License No. EO 149827

Smog Check Repair Technician License No. EI 149827,

Respondents.

Agency Case No. 79/21-1628

OAH No. 2021070449

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 13, 2021, by videoconference. The record was closed, and the matter submitted for decision at the conclusion of the hearing.

Stephanie J. Lee, Deputy Attorney General, represented complainant.

William D. Ferreira, Esq., represented respondents.

SUMMARY

Complainant established by a preponderance of the evidence that, in 2020, respondent Kirakos Tatossian, while employed by respondent AAAA, Inc., transmitted false data during his smog checks of five vehicles, in violation of the Automotive Repair Act and the Motor Vehicle Inspection Program. Cause therefore exists to discipline respondents' registration and licenses. Complainant did not establish, however, that respondent Tatossian intentionally clean plugged or otherwise fraudulently inspected the five vehicles. Revocation, therefore, would be unduly punitive. A three-year probationary period for respondents, including a short suspension, as well as an order that respondents pay a reduced amount of the Bureau's costs, will protect the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant is Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department). (Ex. 1, p. A2.)

2. On June 12, 2014, the Bureau issued Automotive Repair Dealer Registration Number ARD 276908 to AAAA, Inc., dba AAAA Auto Repair (respondent AAAA, Inc.), with Nvart Mesropyan as its President/Secretary/Treasurer. The Automotive Repair Dealer Registration was in full force and effect at all times relevant and will expire on June 30, 2022, unless renewed. (Ex. 2.)

3. On July 18, 2016, the Bureau issued Smog Check, Station License Number RC 276908 to respondent AAAA, Inc. The Smog Check, Station License was in full force and effect at all times relevant and will expire on June 30, 2022, unless renewed. (Ex. 2.)

4. In 2018, respondent AAAA, Inc. was certified as a STAR Station. That certification will remain unless the Automotive Repair Dealer Registration or Smog Check, Station License is revoked, canceled, becomes delinquent, or the certification is invalidated. (Ex. 2.)

5. Kirakos M. Tatossian (respondent Tatossian) initially was licensed as an advanced emission specialist technician by the Bureau in 2004. His licensing rights changed in 2012 due to a regulatory amendment. Thus, on October 22, 2012, the Bureau issued Smog Check Inspector License Number EO 149827 to respondent Tatossian. The Smog Check Inspector License was in full force and effect at all times relevant and will expire on November 30, 2022, unless renewed. (Ex. 2.)

6. On October 22, 2012, the Bureau also issued Smog Check Repair Technician License Number EI 149827 to respondent Tatossian. The Smog Check Repair Technician License was in full force and effect at all times relevant but expired on November 30, 2021. Bureau records indicate that while respondent Tatossian timely submitted renewal fees, he did not provide required continuing education completion certificates from the National Institute for Automotive Service Excellence. (Ex. 2.) At hearing, respondent Tatossian appeared confused as to when the certificates were due, and testified he believed his Smog Check Repair Technician License was set to expire next year.

7. On or about May 13, 2021, complainant filed the Accusation against respondents, alleging they had fraudulently passed five vehicles during smog checks by the clean plugging method, described in more detail below. Respondents timely filed a Notice of Defense, which contained a request for a hearing to challenge the allegations of the Accusation.

Respondents' Relevant Background Information

8. Respondent AAAA, Inc. is owned by Ms. Mesropyan. She is respondent Tatossian's ex-wife. Ms. Mesropyan has owned AAAA, Inc. since the inception of the business in approximately 2010, before it became incorporated and licensed as such in 2014. Ms. Mesropyan is essentially an absentee owner. She estimates she visits the shop seven times a month, usually to bring lunch to employees. She is not involved in the operation of the business. (Testimony [Test.] of Mesropyan.)

9. Respondent Tatossian runs the AAAA, Inc. business. He does the paperwork, orders the certificates of compliance, conducts the smog checks, etc. He estimates he does 56-70 smog checks per month and makes approximately \$1,000

every two weeks doing so. Respondent Tatossian also does automotive repairs, including to vehicles that fail a smog check. (Test. of Tatossian.)

10. On February 5, 2019, in a prior action, the Bureau issued Citation Number C2019-752 and ordered respondent AAAA, Inc. to pay a \$1,000 fine. The citation is now final. The citation was based on an incident on December 13, 2018, when respondent AAAA, Inc. conducted a smog check and improperly issued a certificate of compliance to a Bureau undercover vehicle with a missing or modified positive crankcase ventilation system. Respondent Tatossian was the smog check inspector who conducted that smog check. He therefore was issued Citation Number M2019-753 and ordered to complete an eight-hour Bureau certified smog check citation training course. That citation also is final. (Ex. 3.)

11. Respondents have no record of prior discipline with the Bureau. (Ex. 2.)

Smog Check Procedures

12. On March 9, 2015, the Bureau implemented a policy change requiring the use of an On-Board Diagnostic Inspection System (OIS) in testing 2000 model year and newer gas-powered vehicles with a 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer diesel-powered vehicles 14,000 GVW and under. (Ex. 5, pp. A74-76.)

13. The OIS Bureau Check Data (OIS data) lists differences in Vehicle Identification Numbers (VIN) for vehicles that have received smog checks, in addition to communication protocol (the language used to communicate) and Parameter ID (PID) differences with vehicles that have been certified correctly that are the same make and model. (Ex. 5, pp. A74-76.) The communication protocol is programmed into the vehicle's on-board computer during manufacture and does not change. (*Id.*, p.

A76.) PIDs are data points reported by the vehicle on-board computer to a scan tool or OIS. Examples of PIDs are engine speed, vehicle speed, and engine temperature. (*Ibid.*) The PID count is the number of data points reported by the vehicle's on-board computer and is programmed during manufacture. (*Ibid.*)

14. A licensed smog check technician or inspector is the only person authorized by the Bureau to perform smog checks. The technician or inspector enters a personal access code and license number into the smog check station's computer to use the OIS to perform smog checks. (Ex. 5, pp. A74-76.)

15. Licensed smog check inspectors and technicians are required to follow the inspection procedures set forth in The Smog Check Manual (Manual). (Cal. Code Regs, tit. 16, § 3340.45.)

16. The licensed technician or inspector connects the smog check station's test computer, through a cable, called the Data Acquisition Device (DAD), to a Diagnostic Link Connector (DLC), a data port found inside the vehicle's passenger cabin at varying locations, depending on the vehicle model. Through the DAD cable, the smog check station's computer retrieves information from the vehicle's on-board computer. For example, the on-board computer monitors wear and tear to the vehicle, triggers the check engine light before anything actually goes wrong with emissions-related components, and monitors exhaust emissions to see whether a problem is pending. (Ex. 5, pp. A74-76.)

17. During the smog check, the data retrieved from the vehicle's on-board computer is sent to the smog check station's computer and then transmitted over the internet to the Bureau's database, known as the Vehicle Information Database (VID). The VID records every smog check performed in California. The data transmitted to the

VID includes the electronic VIN (eVIN), communication protocol, and PID count. (Ex. 5, pp. A74-77.)

18. If a vehicle passes all parts of a smog check, it will be issued a certificate of compliance that is transmitted automatically to the Bureau's VID. The smog check station also prints the vehicle inspection report (VIR), which the inspector signs and dates under penalty of perjury, indicating whether the vehicle passed the smog check and, if so, the unique number assigned to the certificate of compliance. The printout is given to the vehicle owner, and the station is required to save a copy. The certificate of compliance also is transmitted to the Department of Motor Vehicles (DMV) for use in vehicle registration. (Ex. 5, pp. A74-76.)

19. In some circumstances, smog check inspectors and smog check station operators engage in the illegal practice of clean plugging, which refers to the intentional use of another vehicle's properly functioning on-board diagnostics system, or another source such as a simulator, to generate passing diagnostic readings for the purpose of issuing fraudulent certificates of compliance to vehicles that are not in smog compliance or were not present for the smog check. (Test. of Ian Evans.)

20. The customary charge for a smog check typically ranges from \$35 to \$80. (Test. of Evans.) On the other hand, a customer may ask the smog check inspector to clean plug a vehicle, and will pay, typically, \$200 for a smog check resulting in a certificate of compliance. (*Ibid.*)

21. In some instances, a vehicle owner who doubts the vehicle will pass a smog check may take unlawful actions, without the smog inspector's knowledge, to ensure the vehicle passes the smog check. (Test. of Evans.) Such actions include

installing a different on-board computer or connecting a simulator to the DLC under the dashboard and out of sight of an unsuspecting smog check inspector. (*Ibid.*)

Investigation of Respondents

22. On February 4, 2021, Bureau Program Representative II Ian Evans initiated an investigation in which he reviewed OIS data related to vehicles certified by respondent AAAA, Inc. in 2020. Mr. Evans spent approximately two hours on his investigation.

23. Mr. Evans compared the OIS data he received from the certified vehicles to OIS data from vehicles of the same year, make, and model, and determined that the data from five certified vehicles over approximately a nine-month period in 2020 contained two or more of the following unmistakable discrepancies: (1) missing or incorrect eVINs; (2) incorrect communication protocols; and (3) incorrect PID counts. The five vehicles are discussed in more detail below.

24. Vehicle 1. On March 23, 2020, a 2005 Chrysler PT Cruiser Touring was smog checked and Certificate of Compliance number RG541142C was issued by respondent Tatossian. The OIS data for Vehicle 1 shows the eVIN was correctly transmitted, but the communication protocol was transmitted as ICAN11bt5, and the PID count was 32|8. (Ex. 5, pp. A77-78.)

Similar OIS data for 2005 Chrysler PT Cruiser Touring vehicles show they transmit the correct eVIN, they had the expected communication protocol JVPW, and they transmit a PID count of 18, or 18|3. Vehicle 1 transmitted an unexpected and incorrect communication protocol and PID count. (*Ibid.*)

On September 23, 2017, a previous smog check was performed on Vehicle 1 at a different smog check facility. The OIS data for Vehicle 1 shows the eVIN was correctly transmitted, the communication protocol was transmitted as JVPW, and the PID count was 18|3, all consistent with the expected similar vehicle OIS data and indicative of a valid smog check. (*Ibid.*)

25. Vehicle 2. On April 24, 2020, a 2001 Mercedes-Benz ML 320 was smog checked and Certificate of Compliance number RI196868C was issued by respondent Tatossian. The OIS data for Vehicle 2 shows the eVIN was not reported, but the communication protocol was transmitted as I914, and the PID count was 21. (Ex. 5, p. A78.)

Similar OIS data for 2001 Mercedes-Benz ML 320 vehicles show they do not transmit an eVIN, they had the expected communication protocol KWPF, and they transmit a PID count of 22 or 24. Vehicle 2 transmitted an unexpected and incorrect communication protocol and PID count. (*Ibid.*)

On February 7, 2020, a previous smog check was performed on Vehicle 2 at a different smog check facility. The OIS data for Vehicle 2 shows the eVIN was not transmitted, the communication protocol was transmitted as KWPF, and the PID count was 22, all consistent with the expected similar vehicle OIS data. Vehicle 2 failed that smog check due to an illuminated malfunction indicator light with active and pending trouble codes. (*Ibid.*)

26. Vehicle 3. On July 20, 2020, a 2008 Nissan Frontier Crew Cab LE was smog checked and Certificate of Compliance number RM697059C was issued by respondent Tatossian. The OIS data for Vehicle 3 shows the eVIN was correctly

transmitted, but the communication protocol was transmitted as I914, and the PID count was 22. (Ex. 5, p. A79.)

Similar OIS data for 2008 Nissan Frontier Crew Cab LE vehicles show they transmit the correct eVIN, they had the expected communication protocol ICAN11bt5, and they transmit a PID count of 43. Vehicle 3 transmitted an unexpected and incorrect communication protocol and PID count. (*Ibid.*)

On November 27, 2017, a previous smog check was performed on Vehicle 3 at a different smog check facility. The OIS data for Vehicle 3 shows the eVIN was correctly transmitted, the communication protocol was transmitted as ICAN11bt5, and the PID count was 43, all consistent with the expected similar vehicle OIS data and indicative of a valid smog check. (*Ibid.*)

27. Vehicle 4. On September 23, 2020, a 2007 Nissan Altima 2.5 was smog checked and Certificate of Compliance number RQ598507C was issued by respondent Tatossian. The OIS data for Vehicle 4 shows the eVIN was correctly transmitted, but the communication protocol was transmitted as ICAN11bt5, and the PID count was 39. (Ex. 5, p. A79.)

Similar OIS data for 2007 Nissan ALTIMA 2.5 vehicles show they transmit the correct eVIN, they had the expected communication protocol I914, and they transmit a PID count of 18 or 19. Vehicle 4 transmitted an unexpected and incorrect communication protocol and PID count. (*Ibid.*)

Complainant presented no evidence of prior or subsequent smog checks for Vehicle 4.

28. Vehicle 5. On December 09, 2020, a 2007 Nissan Altima 3.5 SE was smog checked and Certificate of Compliance number RU365948C was issued by respondent Tatossian. The OIS data for Vehicle 5 shows the eVIN was correctly transmitted, but the communication protocol was transmitted as ICAN11bt5, and the PID count was 39. (Ex. 5, p. A80.)

Similar OIS data for 2007 Nissan Altima 3.5 SE vehicles show they transmit the correct eVIN, they had the expected communication protocol I914, and they transmit a PID count of 22. Vehicle 5 transmitted an unexpected and incorrect communication protocol and PID count. (*Ibid*)

On June 15, 2020, a previous smog check was performed on Vehicle 5 at a different smog check facility. The OIS data for Vehicle 5 shows the eVIN was correctly transmitted, the communication protocol was transmitted as I914, and the PID count was 22, all consistent with the expected similar vehicle OIS data and indicative of a valid smog check. (*Ibid*)

29. Mr. Evans' research reveals Vehicles 1 through 5 provided data to the Bureau that had an approximate 99 percent chance of being false. He believes the above-described discrepancies in the OIS data prove a DAD was not connected to any of the five vehicles in question during their smog checks. (Test. of Evans; Ex. 5.) Mr. Evans concludes the data discrepancies confirm the five vehicles in question were intentionally and fraudulently smog checked using the clean plugging method. (*Ibid*)

Respondents' Evidence

30. Due to the passage of time, respondent Tatossian does not remember smog checking the five vehicles in question. (Test. of Tatossian.) He only found three of the involved work orders. A fourth work order he presented at hearing turned out

to be for an unrelated vehicle. He was unable to find the fifth work order. (Ex. A.) The three involved work orders show respondents generally charge \$30 for a smog check. (*Ibid.*)

31. Respondent Tatossian denied ever having demanded or accepted extra money to cheat on a smog check. (Test. of Tatossian.)

32. Respondent Tatossian denied intentionally clean plugging any vehicle. He testified he has never used a simulator or a surrogate vehicle to fraudulently pass a smog check. In fact, he testified he has never seen a simulator. (Test. of Tatossian.)

33. Respondent Tatossian testified he has no motive to clean plug. He testified the extra money one could make from clean plugging is not worth the risk. He also testified that if a vehicle does not pass a smog check, he can offer to repair the vehicle since he is a licensed smog check repair technician. Respondents thereby intimate they have more to gain financially by legally failing a vehicle than by fraudulently passing it.

34. On cross-examination, Mr. Evans admitted that five clean plugged vehicles over a nine-month period is a "low number."

35. On cross-examination, Mr. Evans acknowledged respondent Tatossian did not have access to the data transmitted from the vehicles to the VID during the smog checks, and he would not learn if the vehicles passed the smog checks until the end of the testing process. Respondents argue this tends to show respondent Tatossian's testing method for the five vehicles in question was valid.

36. On cross-examination, Mr. Evans admitted there is evidence in the record consistent with information (such as the eVIN) being populated on the VIRs for the five

vehicles in question from respondent Tatossian scanning the customers' DMV documents, as opposed to his manually entering the information. Respondents argue this tends to show respondent Tatossian's testing method for the five vehicles in question was valid.

37. On cross-examination, Mr. Evans admitted he had no evidence respondents were paid unusual or extraordinary compensation for smog checking the five vehicles in question. He also admitted he did not visit respondent AAAA, Inc.'s station to see whether it had clean plugging equipment, such as a simulator. He did not interview Ms. Mesropyan, respondent Tatossian, or any of the five vehicle owners.

38. On cross-examination, Mr. Evans admitted he did not know the source of the discrepant data submitted to the Bureau during the five smog checks.

Overall Findings

39. Complainant established by a preponderance of the evidence that the smog checks of Vehicles 1 through 5 resulted in the transmission of false data to the Bureau's VID and therefore the five vehicles should not have passed their smog checks or been issued certificates of compliance. The false information was transmitted as a result of the DAD not being connected to the five vehicles in question during the smog check process.

Specifically, complainant's affirmative evidence of the discrepant data transmitted during respondents' five smog checks, contrasted with the consistent and valid data transmitted by four of the vehicles in prior smog checks at other stations, was more convincing than respondents' evidence, which consisted mainly of their denials of intentionally clean plugging the five vehicles in question.

This finding is supported by the comment made by respondents' counsel in opening statements that it was likely the five vehicles in question had been connected to a simulator during their smog checks, albeit unbeknownst to respondent Tatossian.

40. On the other hand, complainant did not establish by a preponderance of the evidence that respondents knowingly or intentionally entered false information regarding the smog checked vehicles, intended to deceive the Bureau, or otherwise intentionally engaged in clean plugging.

The fact five smog checks transmitted discrepant data, while suspicious, does not prove respondents intentionally clean plugged the five vehicles in question, in the absence of evidence corroborating fraudulent conduct occurred. Respondents' denials of intentionally clean plugging, coupled with their overall history of good conduct and lack of motive for them to clean plug a relatively low number of vehicles in 2020, is more convincing than complainant's evidence consisting solely of data and statistics derived from a two-hour computer investigation.

This finding is supported by complainant's counsel's concession during closing argument that she was not specifically arguing respondents intended to defraud the Bureau during the five smog checks in question. Instead, she argued the evidence more strongly showed respondent Tatossian either missed obvious signs of an implanted simulator in the vehicles, disregarded signs of emission control problems such as smoke in the exhaust or rough idling, or both, and thereby intentionally failed to conduct valid smog checks in compliance with the law. However, it was not established by a preponderance of the evidence that such warning signs were present when respondent Tatossian smog checked the five vehicles in question.

41. By the same token, respondents have presented no evidence explaining why false data was transmitted to the Bureau as a result of the five smog checks in question. Ms. Mesropyan has no knowledge of those five smog checks. Respondent Tatossian has no memory of the five smog checks.

Costs

42. Complainant requests reimbursement of the costs of investigation in the amount of \$1,138.60 and costs of enforcement in the amount of \$4,223.75, for a total of \$5,362.35. This amount consists of costs incurred by two Bureau investigators, including Mr. Evans, and legal fees of the Office of the Attorney General for which the Bureau has been, or will be, billed. (Ex. 4.)

43. The costs are reasonable. Respondents do not dispute the costs or contend they will be unable to pay them if awarded.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof in a licensing disciplinary action is on the party making the charges in an accusation. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789 fn. 9.)

2. Because this administrative action does not involve discipline of a professional license, the standard of proof is the preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916–918.) A preponderance of the evidence means

evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Jurisdiction

3. Business and Professions Code section 9884.7, subdivision (a), a provision of the Automotive Repair Act (Chapter 20.3 of the Bus. & Prof. Code) provides that the Director of the Department (Director) may discipline an Automotive Repair Dealer Registration for specified misconduct, where the registrant cannot show there was a bona fide error. The language of the bona fide error exception indicates it is an affirmative defense requiring proof presented by a licensee. Hereinafter, any undesignated statutory reference is to the Business and Professions Code.

4. 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. Included in those powers is the authority to discipline a Smog Check, Station License, Smog Check Inspector License, and Smog Check Repair Technician License.

5. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration of a Smog Check Repair Technician License shall not deprive the Director of jurisdiction to proceed with disciplinary action. Thus, the fact respondent Tatossian's Smog Check Repair Technician License has expired does not prohibit the Director from disciplining that license.

Cause for Discipline Against Respondent AAAA, Inc.

6. When a licensee operates a licensed business through employees and agents, the licensee is responsible to the licensing authority for the employees' and

agents' conduct in the exercise of the license. (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144; *Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 193.) By virtue of ownership of a license, the owner has a responsibility to see to it that the license is not used in violation of the law. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360.)

7. Thus, a licensee in an administrative matter is responsible for the misconduct and regulatory violations of its employees. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) In this case, respondent AAAA, Inc. can be disciplined for the actions of respondent Tatossian, even though Ms. Mesropyan had no involvement in the five smog checks in question.

8. Pursuant to section 9884.7, subdivision (a)(1), an Automotive Repair Dealer Registration is subject to discipline for "[m]aking or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

Cause does not exist to discipline respondent AAAA, Inc.'s Automotive Repair Dealer Registration under section 9884.7, subdivision (a)(1). While respondent AAAA, Inc. made untrue or misleading statements when it certified that vehicle 1 through 5 were in compliance with applicable laws and regulations as required by Health and Safety Code section 44012, it was not established by a preponderance of the evidence that respondent AAAA, Inc. knew, or reasonably should have known, the certificates of compliance were false. (Factual Findings 1-41.)

9. Section 9884.7, subdivision (a)(4), subjects an Automotive Repair Dealer Registration to discipline for "[a]ny other conduct that constitutes fraud."

Neither the Automotive Repair Act nor the regulations promulgated under it include a definition of "fraud." In general, fraud will be found when an individual "intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him." (*Wayne v. Bureau of Private Investigators and Adjusters, Dept. of Professional and Vocational Standards* (1962) 201 Cal.App.2d 427, 438; see also Civ. Code, § 1572.)

Cause does not exist to discipline respondent AAAA, Inc.'s Automotive Repair Dealer Registration pursuant to section 9884.7, subdivision (a)(4), because it was not established by a preponderance of the evidence, as alleged, that respondent Tatossian committed acts of fraud by intentionally clean plugging five vehicles in order to issue certificates of compliance for vehicles that would not otherwise pass a smog check, or that he intentionally transmitted false data to the Bureau or DMV. (Factual Findings 1-41.)

10. Pursuant to section 9884.7, subdivision (a)(6), an Automotive Repair Dealer Registration is subject to discipline for "[f]ailure in any material respect to comply with the provisions of this chapter [Chapter 20.3 of the Automotive Repair Act] or regulations adopted pursuant to it."

Cause exists to discipline respondent AAAA, Inc.'s Automotive Repair Dealer Registration pursuant to section 9884.7, subdivision (a)(6), in that it was established by a preponderance of the evidence that respondent Tatossian issued certificates of compliance for five vehicles based on false data transmitted to the Bureau, in contravention of the Automotive Repair Act and the regulations adopted pursuant to it. Moreover, respondent AAAA, Inc. cannot show this misconduct was the result of a bona fide error, where respondent Tatossian has no recall of the five

involved vehicles and otherwise no explanation for transmitting false data to the Bureau. (Factual Findings 1-41.)

11. Pursuant to Health and Safety Code section 44072.2, subdivision (a), a Smog Check, Station Licensee is subject to discipline if it “[v]iolates any section of this chapter [Chapter 5 of the Motor Vehicle Inspection Program] . . . , which related to the licensed activities.”

Cause exists to discipline respondent AAAA, Inc.’s Smog Check, Station License under Health and Safety Code section 44072.2, subdivision (a), in that it was established by a preponderance of the evidence that it failed to ensure emission control checks were performed on Vehicles 1 through 5 in accordance with Bureau procedures, as required by Health and Safety Code section 44012. In addition, respondent Tatossian issued certificates of compliance for Vehicles 1 through 5 without ensuring the vehicles were properly checked and inspected, as required by Health and Safety Code section 44015. (Factual Findings 1-41.)

Specifically, the fact respondent Tatossian transmitted false data to the Bureau from each of the five smog checks is better evidence that he failed to comply with the requirements of the pertinent laws than his denials otherwise.

12. Pursuant to Health and Safety Code section 44072.2, subdivision (c), a Smog Check, Station Licensee is subject to disciplinary action for failing to comply with the provisions of regulations adopted under Chapter 5 of the Motor Vehicle Inspection Program, located at title 16 of the California Code of Regulations (Regulation).

Cause exists to discipline respondent AAAA, Inc.’s Smog Check, Station License under Health and Safety Code section 44072.2, subdivision (c), in that it was established by a preponderance of the evidence that it failed to comply with

Regulation 3340.35, subdivision (c). Specifically, respondent Tatossian issued certificates of compliance to Vehicles 1 through 5, even though those vehicles had not been inspected in accordance with Regulation 3340.42. The failure to inspect the vehicles in accordance with applicable regulations was demonstrated by the fact respondent AAAA, Inc. transmitted false data to the Bureau in connection with those five smog checks, and respondent Tatossian's lack of explanation for why that happened. (Factual Findings 1-41.)

However, it was not proven that respondent AAAA, Inc. fraudulently issued five certificates of compliance in violation of Regulation 3340.24, subdivision (c), or knowingly transmitted false data to the Bureau in violation of Regulation 3340.41, subdivision (c). (Factual Findings 1-41.)

13. Pursuant to Health and Safety Code section 44072.2, subdivision (d), a Smog Check, Station Licensee is subject to disciplinary action when it "commits any act involving dishonesty, fraud, or deceit whereby another is injured."

Cause does not exist to discipline respondent AAAA, Inc.'s Smog Check, Station Licensee under Health and Safety Code section 44072.2, subdivision (d), in that it was not proven it committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing certificates of compliance for Vehicles 1 through 5. As discussed above, it was not established that respondents intentionally clean plugged the five vehicles in question or intentionally transmitted false data to the Bureau or the DMV. (Factual Findings 1-41.)

Cause for Discipline Against Respondent Tatossian

14. Pursuant to Health and Safety Code section 44072.2, subdivision (a), a Smog Check Inspector or Smog Check Repair Licensee is subject to disciplinary action

for violating any section of Chapter 5 of the Motor Vehicle Inspection Program related to the licensed activities.

Cause exists to discipline respondent Tatossian's Smog Check Inspector and Smog Check Repair Licenses under Health and Safety Code section 44072.2, subdivision (a). It was established by a preponderance of the evidence that respondent Tatossian transmitted false data to the Bureau, which demonstrates he failed to ensure emission control checks were performed on Vehicles 1 through 5 in accordance with Bureau procedures, as required by Health and Safety Code section 44012; and he failed to perform checks of emission control devices and systems for Vehicles 1 through 5 in accordance with Health and Safety Code section 44012. (Factual Findings 1-41.)

Cause does not exist to discipline respondent Tatossian's Smog Check Inspector or Smog Check Repair Licenses under Health and Safety Code section 44072.2, subdivision (a), for violating Health and Safety Code section 44059, because it was not established respondent Tatossian willfully made false entries on the certificates of compliance for Vehicles 1 through 5. (Factual Findings 1-41.)

15. Pursuant to Health and Safety Code section 44072.2, subdivision (c), a Smog Check Inspector or Smog Check Repair Licensee is subject to disciplinary action for failing to comply with the provisions of regulations adopted under Chapter 5 of the Motor Vehicle Inspection Program.

Cause exists to discipline respondent Tatossian's Smog Check Inspector or Smog Check Repair Licenses under Health and Safety Code section 44072.2, subdivision (c). It was established by a preponderance of the evidence that respondent Tatossian transmitted false data to the Bureau from five smog checks, which

demonstrates he failed to comply with Regulations 3340.30, subdivision (a), and 3340.42, by failing to inspect vehicles 1 through 5 in accordance with Health and Safety Code sections 44012 and 44035. (Factual Findings 1-41.)

However, it was not proven that respondent Tatossian fraudulently issued five certificates of compliance in violation of Regulation 3340.24, subdivision (c), or knowingly transmitted false data to the Bureau in violation of Regulation 3340.41, subdivision (c). (Factual Findings 1-41.)

16. Pursuant to Health and Safety Code section 44072.2, subdivision (d), a Smog Check Inspector or Smog Check Repair Licensee is subject to disciplinary action when he "commits any act involving dishonesty, fraud, or deceit whereby another is injured."

Cause does not exist to discipline respondent Tatossian's Smog Check Inspector or Smog Check Repair Licenses under Health and Safety Code section 44072.2, subdivision (d), in that the evidence does not demonstrate respondent Tatossian committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing certificates of compliance for Vehicles 1 through 5. (Factual Findings 1-41.)

Disposition

DISCIPLINE

17. Having found cause for discipline on approximately half of the causes for discipline set forth in the Accusation, it is necessary to determine the appropriate level of discipline. The Bureau's *Guidelines for Disciplinary Orders and Terms of Probation* (rev. March 2016 (Guidelines)), issued under Regulation 3395.4, identify factors to be

considered in determining the appropriate level of discipline as well as the recommended discipline for the various types of misconduct established in this case.

18. The Guidelines identify 15 aggravating and 12 mitigating factors to be considered in determining discipline.

Only one of the listed aggravating factors applies here, i.e., the 2019 citation for failing to detect a missing or modified positive crankcase ventilation system during a smog check of a Bureau undercover vehicle.

On the other hand, several of the mitigating factors apply. Respondents have never been disciplined or warned by the Bureau. It was not established that the false data transmitted to the Bureau five times over nine months was a pattern of practice or that respondents engaged in fraudulent or grossly negligent conduct. There was no evidence of loss to respondents' customers. (Factual Findings 1-41.)

19. The Guidelines set forth recommended discipline for specific statutory and regulatory violations. Under appropriate circumstances, a decision after an administrative hearing may include a stay of execution and the condition that a respondent comply with specified terms and conditions of probation. (Gov. Code, § 11519, subds. (a) & (b).) In this case, the Guidelines recommend two- or three-years' probation with various optional terms for respondents' established misconduct.

20. The statutes relating to licensing of professions are designed to protect the public from dishonest, untruthful, and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) License disciplinary proceedings are not intended to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.)

21. The ALJ also is mindful of appellate authority indicating caution is warranted when considering statistical or computer-generated evidence, such as that presented in this case concerning the likelihood that the data respondents transmitted to the Bureau was false. For example, it has been observed that, “[m]athematics, a veritable sorcerer in our computerized society, while assisting the trier of fact in the search for truth, must not cast a spell over him. [A] defendant should not have had his guilt determined by the odds.....” (*People v. Collins* (1968) 68 Cal.2d 319, 320.) In another case, a court refused to find intentional billing fraud based solely on statistical evidence without any eyewitness testimony, observing “the seductively superficial statistical evidence” could unfairly tip the balance in the prosecution’s favor “despite the absence of any indication of fraudulent intent.” (*People v. Louie* (1984) 158 Cal.App.3d Supp. 28, 49.)

In this case, the discrepant data generated by the five smog checks in question would make one reasonably suspicious of clean plugging. However, unlike other cases brought by the Bureau for other varieties of misconduct, there was no direct or eyewitness evidence presented in this case, such as surveillance video, statements of respondents or the owners of the five vehicles, or evidence obtained from an inspection of respondents’ smog check station or records.

Respondent Tatossian

22. Respondent Tatossian’s misconduct warrants less than an outright revocation of his licenses. Although complainant proved respondent Tatossian transmitted false data to the Bureau during five smog checks, complainant failed to prove respondent Tatossian’s conduct was intended to defraud the Bureau. Respondent Tatossian also satisfies several of the mitigating factors identified in the Guidelines. While respondent Tatossian failed to perform smog checks in accordance

with the law, complainant did not establish any intent to defraud or deceive, and respondent Tatossian has no prior disciplinary record. The discipline recommended in the Guidelines is appropriate and will ensure public protection, as well as facilitate the rehabilitation of respondent Tatossian, without being unduly punitive or burdensome. (Factual Findings 1-41; Legal Conclusions 1-5 & 14-21.)

Respondent AAAA, Inc.

23. While Ms. Mesropyan had no involvement with the five smog checks in question, she essentially was an absentee owner. She has taken no measures to ensure her smog check station is being operated within the law or any corrective action subsequent to respondent Tatossian's misconduct. As the evidence indicates she has allowed respondent Tatossian to run the smog check business, her registration and license should receive the same level of discipline as him. (Factual Findings 1-41; Legal Conclusion 1-13.)

OTHER CONSIDERATIONS

24. Pursuant to section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the Automotive Repair Dealer Registration for all places of business operated in this state by respondent AAAA, Inc. (or Ms. Mesropyan), upon a finding it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an Automotive Repair Dealer Registration. However, such action is not warranted in this case because it was not established that respondent AAAA, Inc. engaged in repeated and willful violations of the applicable laws and regulations. (Legal Conclusions 1-13 & 23.)

25. Pursuant to Health and Safety Code section 44072.8, if the Smog Check, Station License issued to respondent AAAA, Inc. is revoked or suspended following a

hearing, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director. In this case, because respondent AAAA, Inc's Smog Check, Station License will be suspended and revoked (stayed), any additional license issued in the name of AAAA, Inc. (or Ms. Mesropyan), under Chapter 5 of the Motor Vehicle Inspection Program, will be suspended and revoked (stayed). (Legal Conclusions 1-13, 17-21, 23.)

26. Pursuant to Health and Safety Code section 44072.8, if the Smog Check Inspector or Smog Check Repair Technician Licenses issued to respondent Tatossian is/are revoked or suspended following a hearing, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in his name may be likewise revoked or suspended by the Director. In this case, because respondent Tatossian's licenses will be suspended and revoked (stayed), any additional license issued in his name under Chapter 5 of the Motor Vehicle Inspection Program will be suspended and revoked (stayed). (Legal Conclusions 1-5, 14-22.)

COSTS

27. Section 125.3 provides that a licentiate found to have committed a violation of an applicable licensing act shall pay the reasonable costs of the investigation and enforcement of the case. Here, respondents were found to have violated the Automotive Repair Act and the Motor Vehicle Inspection Program. As set forth in Factual Findings 42 through 43, the costs total \$5,362.35.

28. The Bureau must evaluate several factors to ensure that cost recovery does not deter individuals from exercising their right to a hearing. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 (*Zuckerman*).) The Bureau

must not assess full costs where it would unfairly penalize a respondent who has committed some misconduct but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Bureau must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the Bureau must consider a respondent's ability to pay; and, the Bureau may not assess disproportionately large investigation and enforcement costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct.

29. Applying the *Zuckerman* factors, it is noted only half the alleged causes for discipline against respondents were sustained, and the disposition of this case is less than outright revocation, which was the relief requested by complainant at the conclusion of the hearing. Therefore, the Bureau's costs should be reduced by 50 percent, from \$5,362.35 to \$2,181.17. Respondents are jointly and severally liable for costs in that amount, but shall be permitted to pay those costs according to a reasonable payment plan. (Factual Findings 42-43; Legal Conclusions 1-23.)

ORDER

It is hereby ordered that the following registration is invalidated and licenses are revoked: (a) Automotive Repair Dealer Registration Number ARD 276908 issued to AAAA, Inc., dba AAAA Auto Repair with Nvart Mesropyan as its President/Secretary/Treasurer; (b) Smog Check, Station License Number RC 276908 issued to respondent AAAA, Inc., and any other license to operate a Smog Check, Station License issued to respondent AAAA, Inc. or Nvart Mesropyan; (c) Smog Check Inspector License Number EO 149827 issued to respondent Kirakos M. Tatossian; and (d) Smog Check Repair

Technician License Number EI 149827 issued to respondent Kirakos M. Tatossian, and any other license issued to him under Chapter 5 of the Motor Vehicle Inspection Program.

The invalidation and revocations are stayed, however, and respondent AAAA, Inc., dba AAAA Auto Repair, and respondent Kirakos M. Tatossian (hereinafter referred to jointly as respondents) are placed on probation for three years on the following terms and conditions.

1. Actual Suspension

Respondents' registration and licenses are suspended for three consecutive days beginning on the effective date of the Decision and Order.

2. Posting of Signs (Applicable to respondent AAAA, Inc. only)

During the period of suspension, respondent AAAA, Inc. 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(s) of the sign(s) 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, respondents shall comply with all federal and state statutes, regulations, and rules governing all Bureau registrations and licenses held by respondents.

4. Quarterly Reporting

During the period of probation, respondents 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

Respondents 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 under Business and Professions Code section 9884.6.

6. Access to Examine Vehicles and Records

Respondents 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. Respondents shall also provide Bureau representatives unrestricted access to all records pursuant to Bureau laws and regulations.

7. Tolling of Probation

If, during probation, respondent Tatossian or Ms. Mesropyan leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, they 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 respondents obey all laws, shall be held in abeyance during any period of time of 30 days or more in which either respondent Tatossian or Ms. Mesropyan are 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 either of those individuals 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 either or both of respondents violate or fail 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 a 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

Respondents shall, at all times while on probation, maintain current and active registration and licenses with the Bureau, including any period during which suspension or probation is tolled. If a respondent's registration or license is expired at

the time the decision becomes effective, the registration or license must be renewed by that respondent within 30 days of that date. If a respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal that 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 or license during the period of probation shall also constitute a violation of probation.

10. Cost Recovery

Respondents shall jointly and severally pay the Bureau \$2,181.17 for the reasonable costs of the investigation and enforcement of this case. Respondents shall make the payment in equal monthly amounts, beginning 30 days after the effective date of this decision, with full payment completed no later than six months before probation terminates. Respondents shall make payments 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 this case. 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 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, the affected registration and licenses of respondents will be fully restored or issued without restriction, if those respondents meet all current requirements for registration or licensure and have paid all outstanding fees, 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 a respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, the 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 the respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

A respondent may not petition the Director for reinstatement of the surrendered registration 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 a respondent applies to the Bureau for a registration or license at any time after that date, the 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.

13. Training Course (Applicable to Respondent Tatossian only)

During the period of probation, respondent Tatossian shall attend and successfully complete a Bureau-specified and -approved training course in inspection, diagnosis, and repair of emission systems failures and engine performance, applicable to the class of license held by respondent Tatossian. He shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and successful course completion to

the Bureau within the timeframes specified shall constitute a violation of probation, and respondent Tatossian shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

14. Notification to Employer (Applicable to Respondent Tatossian only)

During the period of probation, when performing services that fall within the scope of his licenses, respondent Tatossian shall provide each of his future employers a copy of this decision and the underlying Accusation before commencing employment. Respondent Tatossian shall submit to the Bureau, upon request, satisfactory evidence of compliance with this term of probation.

15. Supervision Requirements (Applicable to Ms. Mesropyan only)

Ms. Mesropyan shall not delegate her supervisory duties, as they relate to the business activities relevant to the probationary registration or respondent AAAA, Inc., to another person during the period of probation. Any persons employed by respondent AAAA, Inc. to carry out such business activities shall be directly supervised by Ms. Mesropyan. In the event that a bona fide medical condition arises during the period of probation, which temporarily prevents Ms. Mesropyan from exercising direct supervision over employees, notice and medical substantiation of the condition shall be submitted to the Bureau within 10 days of the medical affirmation of the condition.

DATE: 01/12/2022

Signed Copy on File
Eric C. Sawyer (Jan 12, 2022 11:44 PST)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings