

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

In the Matter of the First Amended Accusation against:

ABRAHAM CHAKARIAN, doing business as

ABE'S AUTO REPAIR CENTER,

Automotive Dealer Registration No. ARD 277740

Smog Check, Station License No. RC 277740

and

ABRAHAM CHAKARIAN

Smog Inspector License No. EO 639614

Respondents.

Agency Case No. 79/21-14784

OAH No. 2022070309

PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on December 7, 2023, and February 7, 2024, by videoconference.

Deputy Attorney General Christine Lee represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs. Attorney William D. Ferreira, Automotive Defense Specialists, represented respondent Abe's Auto Repair Center and respondent Abraham Chakarian (collectively, respondents).

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on February 7, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant brought this Accusation solely in his official capacity as the Chief of the Bureau. Respondents timely filed a notice of defense and this matter ensued.

Registration History

2. On September 4, 2014, the Bureau issued Automotive Repair Dealer Registration Number ARD 277740 to Abraham Chakarian doing business as Abe's Auto Repair Center (respondent Abe's Auto Repair). The Automotive Repair Dealer

Registration was in full force and effect at all times relevant to the charges brought in the First Amended Accusation. It expires on September 30, 2024, unless renewed.

3. On April 8, 2016, the Bureau issued Smog Check Station License Number RC 277740 to Abraham Chakarian, doing business as Abe's Auto Repair. The Smog Check Station license was in full force and effect at all times relevant to the charges in the First Amended Accusation. It expires on September 30, 2024, unless renewed.

4. On December 2, 2019, the Bureau issued a STAR certificate to Abe's Auto Repair Center. The STAR certification remains active unless the Automotive Repair Dealer and/or Smog Check station license is revoked, cancelled, the license becomes delinquent, or the certification is suspended.

5. On August 29, 2016, the Bureau issued Smog Check Inspector License No. EO 639614 to Abraham Chakarian (respondent Abraham Chakarian). The Smog Check Station License was in full force and effect at all times relevant to the charges in the First Amended Accusation. It expires on March 31, 2024, unless renewed.

Smog Check Procedures

6. Beginning in March 2015, the Bureau required smog check test stations to use the On-Board Diagnostic inspection system (OIS), a type of smog check equipment, for inspection of most model-year 2000 or newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The OIS is comprised of a Data Acquisition Device (DAD), a scanner used to capture data directly from the vehicle being inspected, as well as a bar code scanner and a printer. Technicians are required to input a unique access code they are assigned by the Bureau and then plug the DAD into a portal within the vehicle known as the link connector. The DAD retrieves certain

data relevant to the vehicle's emissions output. That information populates records in a data base accessible by the Bureau.

7. The Bureau's database contains the smog test results as well as certain signature information vehicles of the same make, model, and year. Specifically, vehicles of the same make, model, and year will bear the same communication protocol, the electronic language the vehicle uses to communicate with scanning tools, and the same parameter identification (PID), which are attributes of the vehicles such as engine and vehicle speed and engine temperature. Both the communication protocol and the PID are programmed in the vehicles at the time of its manufacture and do not change. Finally, vehicles manufactured in 2005 or after will emit an electronic vehicle identification number (eVIN) which should match the vehicle identification number (VIN), a unique number assigned to each vehicle and etched onto its body. Some auto manufacturers began programming vehicles to emit eVINS before they were required to in 2005.

8. In addition to examining the vehicle with the OIS, the inspector must complete a visual and functional inspection. The vehicle must pass the visual and functional inspections in addition to the OIS before it can be certified as smog control-compliant. The visual inspection requires the smog inspector to check for any irregularities with the smog control equipment, including whether there have been any substitutes or additional equipment installed.

9. The OIS produces a Vehicle Inspection Report (VIR), which states that the inspection followed Bureau requirements and must be signed under penalty of perjury by the smog technician who inspected the vehicle.

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Bureau Investigation of Respondents

10. Among its duties, the Bureau monitors smog check stations and technicians for illegal actions used to circumvent the emissions requirements and produce compliance certificates for vehicles not otherwise able to successfully pass the smog check process. One such method, commonly referred to as clean-plugging, involves plugging the DAD into a surrogate vehicle or into a simulator to create data demonstrating compliance with emissions standards. The practice can sometimes be indicated because information input or scanned under the beneficiary vehicle's identification number will not reflect the eVIN if one is expected or a communication protocol or PID reading consistent with what is expected for that type of vehicle. The Bureau does not warn inspection stations that tested vehicles are emitting electronic signatures inconsistent with expected values for the make and model of the vehicle tested.

FIRST DATA REVIEW

11. Ian Evans recently retired from the Bureau where he was working as a Bureau Representative II. In that position, he investigated smog inspection stations and technicians, including respondents. After conducting his investigation, Mr. Evans determined the data from seven vehicles respondents smog checked and passed contained discrepancies between the information transmitted during the inspection and documented information known about the subject vehicles. Specifically, Mr. Evans compared the data received from the vehicles certified as smog-compliant by respondents to data from vehicles of the same year, make, and model. He determined the data from seven of the certified vehicles contained two or more discrepancies from the expected data in the following areas: (i) missing eVINS; (ii) incorrect vehicle communication protocols; and/or (iii) incorrect PID counts.

Vehicle No. 1 – 2001 Ford Excursion XLT

OIS test detail reflects that on August 16, 2021, respondents issued Certificate of Compliance Number SE668774C for a 2001 Ford Excursion XLT bearing vehicle identification number (VIN) 1FMNU40LXIED82288.

The OIS test detail reflected communication protocol of 1914; the expected communication protocol is JPWM. The PID count was 20; the expected PID is 18 or 20. The eVIN was not reported; the expected eVIN is 1FMNU40LXIED82288.

Vehicle No. 2- 2013 Nissan 370Z

OIS test detail reflects that on August 27, 2021, respondents issued Certificate of Compliance Number SE668792C for a 2013 Nissan 370Z Base bearing VIN JN1SZ4EH1DM382895. The test detail reflected communication protocol of ICAN29bt5; the expected communication protocol is ICAN11bt5. The PID count was 20; the expected PID is 46. The eVIN was correct and matched the VIN.

Vehicle No. 3 – 2005 Ford GT

OIS test detail reflects that on September 13, 2021, respondents issued Certificate of Compliance Number SG447349C for a 2005 Ford GT bearing VIN 1FAFP90SX5Y400285. The test detail reflected communication protocol of KWPF; the expected communication protocol is JPWM. The PID count was 20; the expected PID is 23/0. The OIS did not report the expected eVIN.

Vehicle No. 4 – 2004 Jeep Grand Cherokee Laredo

OIS test detail reflects that on October 8, 2021, respondents issued Certificate of Compliance Number IN404401C for a 2004 Jeep Grand Cherokee Laredo bearing VIN

1J4GW48N64C258946. The test detail reflected communication protocol of ICAN29bt5; the expected communication protocol is JVPW. The PID count was 20; the expected PID is 20/3. The OIS reported an eVIN matching the VIN, when no eVIN was expected.

Vehicle No. 5- 2007 Dodge Charger SE

OIS test detail reflects that on October 21, 2021, respondents issued Certificate of Compliance Number IN404427C for a 2007 Dodge Charger bearing VIN 2B3LA43R77H660474. The test detail reflected communication protocol of ICAN29bt5; the expected protocol is ICAN 11bt5. The PID count was 95; the expected PID is 43. The eVIN was reported as expected and matched the VIN.

Vehicle No. 6 – 2012 Ferrari 458 Spider

OIS test detail reflects that on respondents issued Certificate of Compliance Number S1786101C for a 2012 Ferrari 458 Spider bearing VIN ZFF68NHAC0188766. The test detail reflected communication protocol of ICAN29bt5; the expected communication protocol is ICAN11bt5. The PID count was 95; the expected PID is 42-14-42 or 43-14-42. The eVIN was reported as expected and matched the VIN. This vehicle was also found to have failed an earlier smog test at another smog check station. According to Mr. Evans, owners of high-power sports cars, such as Ferraris, sometimes remove emissions-minimizing equipment to increase the horsepower.

Vehicle No. 7 – 2002 Toyota Corolla CE

OIS test detail reflects that on November 3, 2021, respondents issued Certificate of Compliance Number S1786102C for a 2002 Toyota Corolla CE bearing VIN 1NXBR12E02Z633361. The test detail reflected communication protocol of ICAN29bt5;

the expected communication protocol is 1914. The PID count was 95; the expected PID is 16. The eVIN was not reported, as expected.

12. Mr. Evans opined these vehicles were clean-plugged through a simulator rather than another surrogate vehicle. Ms. Evans based his opinion on the series of dots appearing where the eVIN (or nothing) should have been in the Bureau's data base of captured information from the smog station inspections. During his testimony, Mr. Evans stated this type of result is, in his experience, more consistent with results from a simulator than those from a surrogate vehicle.

13. Mr. Evans opined there is an approximately a 96% chance that a properly tested vehicle will emit the expected electronic signatures.

SECOND DATA REVIEW

14. Bureau representative Mark Casillas initiated a further review of smog check data from Respondent Abe's Auto Repair. As with Mr. Evan's findings, Mr. Casillas found discrepancies between the information transmitted during the inspections and documented information known about the subject vehicles as follows:

Vehicle No. 1 – 2002 Mercedes Benz S 430

OIS test detail reflects that on December 21, 2021, respondents issued Certificate of Compliance Number SK386141C for a 2002 Mercedes Benz S 430 bearing VIN WDBNG70J02A280744. The test detail reflected communication protocol of KWPF, as expected. The PID count was 95; the expected PID is 22. The eVIN was not reported, as expected.

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Vehicle No. 2 – 2014 Chevrolet Impala LS

OIS test detail reflects that on January 6, 2022, respondents issued Certificate of Compliance Number SM035066C for a 2014 Chevrolet Impala LS bearing VIN 1G11Y5SL7EU104978. The test detail reflected communication protocol of ICAN11bt5, as expected. The PID count was 95; the expected PID is 43/4/5 or 44/4/5. The eVIN was reported, as expected and matched the VIN.

Vehicle No. 3 – 2003 Lexus ES300

OIS test detail reflects that on January 14, 2022, respondents issued Certificate of Compliance Number SM035077C for a 2003 Lexus ES300 bearing VIN JTHBF30G930112823. The test detail reflected communication protocol of 1914, as expected. The PID count was 95; the expected PID is 21. The eVIN was not reported, as expected.

Vehicle No. 4 – 2004 Nissan Xterra XE

OIS test detail reflects that on February 24, 2022, respondents issued Certificate of Compliance Number SM934817C for a 2004 Nissan Xterra XE bearing VIN 5N1ED28T54C636644. The test detail reflected communication protocol of 1914, as expected. The PID count was 95; the expected PID is 22. The eVIN was not reported, as expected.

Vehicle No. 5 – 2006 Toyota Tacoma Double Cab PreRunner Long Bed

OIS test detail reflects that on March 8, 2022, respondents issued Certificate of Compliance Number SM934841C for a 2006 Toyota Tacoma Double Cab PreRunner Long Bed bearing VIN 3TMKU72N76M006642. The test detail reflected communication

protocol of ICAN11bt5, as expected. The PID count was 95; the expected PID is 46. The eVIN was reported and matched the VIN, as expected.

Vehicle No. 6 – 2004 Ford F250 Super Duty

OIS test detail reflects that on March 23, 2022, respondents issued Certificate of Compliance Number SO152426C for a 2004 Ford F250 Super Duty bearing VIN 1FTNX20P64EB71225. The test detail reflected communication protocol of ICAN29bt5; the expected communication protocol is ICAN11bt5. The PID count was 95; the expected PID is 11/6 or 26/6. The eVIN was not reported, as expected.

Vehicle No. 7 – 2008 Chevrolet Corvette Z06

OIS test detail reflects that on April 1, 2022, respondents issued Certificate of Compliance Number S0152448C for a 2008 Chevrolet Corvette Z06 bearing VIN 1G1YY26E285130377. The test detail reflected communication protocol of ICAN11bt5, as expected. The PID count was 95; the expected PID is 43 or 43/7. The eVIN was reported and matched the VIN, as expected.

Vehicle No. 8 – 2007 Chevrolet Corvette Z06

OIS test detail reflects that on April 5, 2022, respondents issued Certificate of Compliance Number S0783954C for a 2007 Chevrolet Corvette Z06 bearing VIN 1GIYY26EX75119612. The test detail reflected communication protocol of ICAN29bt5, as expected. The PID count was 95; the expected PID is 43. The eVIN was reported and matched the VIN, as expected.

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Vehicle No.9 – 2002 Toyota Tacoma Double Cab PreRunner

OIS test detail reflects that on April 20, 2022, respondents issued Certificate of Compliance Number S0783982C for a 2002 Toyota Tacoma Double Cab PreRunner bearing VIN 5TEGN92N52Z037979. The test detail reflected communication protocol of 1914, as expected. The PID count was 95; the expected PID is 17. The eVIN was not reported, as expected.

Vehicle No.10 – 2010 Mercedes Benz E 350

OIS test detail reflects that on May 3, 2022, respondents issued Certificate of Compliance Number SQ550960C for a 2010 Mercedes Benz E 350 bearing VIN WDDHF5GBXAA07940. The test detail reflected communication protocol of KWPF; the expected communication protocol is ICAN11bt5. The PID count was 95; the expected PID is 47/12. The eVIN was not reported. The eVIN should have been reported and matched the VIN.

Vehicle No. 11 – 2003 Chevrolet Astro

OIS test detail reflects that on May 13, 2022, respondents issued Certificate of Compliance Number SQ550980C for a 2003 Chevrolet Astro bearing VIN 1GCDM19X23B133864. The test detail reflected communication protocol of 1914; the expected communication protocol is 1914. The PID count was 95; the expected PID is 20 or 21. The eVIN was not reported; it was expected and should have matched the VIN.

Vehicle No. 12 – 2007 BMW 550I

OIS test detail reflects that on May 13, 2022, respondents issued Certificate of Compliance Number SQ550981C for a 2007 BMW 550I bearing VIN

WBANB53537CP07927. The test detail reflected communication protocol of KWPF, as expected. The PID count was 95; the expected PID is 21, 21/14 or 21/7. The eVIN was not reported; it was expected and should have matched the VIN.

Vehicle No. 13 – 2011 Chrysler 300

OIS test detail reflects that on May 17, 2021, respondents issued Certificate of Compliance Number SQ550994C for a 2011 Chrysler 300 bearing VIN 2C3CA4CG0BH518154. The test detail reflected communication protocol of ICAN11bt5, as expected. The PID count was 95; the expected PID is 41/12. The eVIN was reported, as expected and matched the VIN.

Vehicle No. 14 – 2019 Chevrolet Silverado

OIS test detail reflects that on May 24, 2022, respondents issued Certificate of Compliance Number SQ858210C for a 2019 Chevrolet Silverado bearing VIN 1GCPPEX3AZ196257. The test detail reflected communication protocol of ICAN11bt5, as expected. The PID count was 95; the expected PID is 43/7. The eVIN was reported, as expected and matched the VIN.

15. Notably, unlike the vehicles on Mr. Evans' list, nine of the 14 vehicles, vehicle numbers 2, 3, 4, 5, 7, 8, 9, 13, and 14, on Mr. Casillas list bore only one discrepancy, the PID. All of these vehicles reported the correct communication protocol. For those vehicles not expected to report an eVIN, vehicle numbers 2, 3, 4, 9, and 14, they did not. For those vehicles expected to report an eVIN, vehicle numbers 5, 7, 8, and 13, they did and the eVIN matched the VIN on the vehicle's certificate.

16. Mr. Casillas noted that, for the 14 vehicles he analyzed, there was other information such as the engine run time since the "DTC" cleared and the distance

traveled since certain codes cleared, which were identical across the data for the 14 vehicles. Mr. Casillas opined it was extremely unlikely these values would be the same for this number of vehicles and cited this outcome as another indication of clean-plugging.

17. Both Mr. Evans and Mr. Casillas explained clean plugging as achieved by using another vehicle's properly functioning OIS or a simulator. Neither of these Board representatives, however, explained how another source could emit partially correct information, particularly an eVIN, which is unique to each vehicle.

18. Complainant provided no evidence of clean-plugging except the data demonstrating discrepancies as reported to the Bureau's VID.

Respondent Chakarian's Evidence

19. Respondent is 62 years old and has been an auto mechanic since he was a 16-year-old. He immigrated to the United States in 1984 and almost immediately began working in auto mechanic shops. In 1993, respondent Chakarian opened his own shop and has been working for himself since. Respondent Chakarian works alone. He is the sole mechanic performing smog tests at his current shop, Abe's Auto Repair. Neither he nor his shop has a history of Bureau discipline. He has never received a Bureau-issued citation or been brought into the Board for an office consultation.

20. Regarding the 21 vehicles at issue, respondent Chakarian maintained he did not use a surrogate vehicle and has no knowledge of simulators, to the extent that he would not recognize one installed in a vehicle he was inspecting. Respondent Chakarian acknowledged he is the only smog inspector working in his shop and he completed all the certificates of compliance for the vehicles at issue. Respondent Chakarian was adamant, however, he did not engage in clean plugging. He speculated

the vehicles may have had simulators installed in them before they were brought to his shop or that the equipment used for the inspections malfunctioned.

Costs

21. Complainant has requested costs of investigation in the amount of \$674.66 and enforcement in the amount of \$16,980, a total of \$17,654.66. These costs are deemed reasonable for the size and scope of the matter.

22. Respondent did not challenge the costs but maintained he is barely able to earn a living sufficient to provide for himself, his disabled wife, and his two young adult children, both of whom are in college and still live at home.

LEGAL CONCLUSIONS

Bureau Mandate

1. Chapter 5 of the Health and Safety Code, known as the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.), vests the Department with the responsibility to reduce vehicle emissions and the Bureau Chief with enforcing and administering the Motor Vehicle Inspection Program, including its provisions applicable to smog check facility owners and smog check technicians.

2. Pursuant to Health and Safety Code section 44072.6, the expiration, suspension or voluntary surrender of a Board-issued license shall not deprive it of jurisdiction to proceed with disciplinary proceedings.

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Standard and Burden of Proof

3. Education and training requirements for smog check station licenses and automotive repair dealer registrations have not been found to be sufficiently similar to the more extensive education, training, and testing requirements associated with those vocations routinely identified as professional. Additionally, there is no statutory provision expressly establishing a standard of proof for these types of administrative proceedings. Under these circumstances, the standard of proof for disciplinary proceedings involving these licenses and registrations are not subject to the more stringent clear and convincing standard used in disciplinary proceedings against professional licenses, but to the preponderance of evidence standard. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917; Evid. Code, § 115.) The term '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.)

4. The Bureau, as the party making the charges, bears the burden of proof and has the obligation to produce evidence in support of the charges it is alleging. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175.) Such burden applies to "each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500.)

Weight and Persuasiveness of Circumstantial Evidence

5. Evidence does not have to be direct to effectively carry the burden of establishing a claim; circumstantial evidence may be as persuasive and convincing as direct evidence. (See, *People v. Overstock.com, Inc.* (2017) 12 Cal.App.5th 1064, 1086.) However, "[i]nferences may constitute substantial evidence but they must be the

product of logic and reason. Speculation or conjecture alone is not substantial evidence." (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1360.)

6. "Where proven facts give equal support to each of two inconsistent inferences, in which event, neither of them being established, judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other, before he is entitled to recover." (*Showalter v. Western Pac. R. Co.* (1940) 16 Cal.2d. 460, 476.)

7. "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of the evidence relating thereto." (Evid. Code, § 413.)

Provisions Regulating Smog Inspection Stations

8. Business and Professions Code section 9884.7 states:

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

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(1) Making or authorizing in any manner or by any means whatsoever 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.

[§] . . . [§]

(4) Any other conduct which constitutes fraud.

[§] [§]

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

9. Business and Professions Code section 9889.22 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with [Health and Safety Code] section 44000..... constitutes perjury and is punishable as provided in the Penal Code.

10. Health and Safety Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to [Health and Safety Code] [s]ection 44013, shall

require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

[¶] . . . [¶]

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of 44001. The visual or functional check shall be performed in accordance with procedures described by the department.

11. Health and Safety Code 44015 states:

[¶] . . . [¶]

(b) If a vehicle meets the requirements of [Health and Safety Code section] 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

12. Health and Safety Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the

test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

13. Health and Safety Code section 44059 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.4 (commencing with section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

14. Health and Safety Code section 44072.10 states:

(c) the department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

15. California Code of Regulations, title 16 (Regulation or Reg.), section 3340.30, subdivision (a) states in pertinent part that a licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

16. California Code of Regulations, title 16, section 3340.35, subdivision (c) states in pertinent part that a licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.

17. California Code of Regulations, title 16, section 3340.41, subdivision (c) states in pertinent part that no person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

18. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be

false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

Causes for Discipline

FIRST AND TWELFTH CAUSES FOR DISCIPLINE - UNTRUE OR MISLEADING STATEMENTS (AS TO AUTOMOTIVE REPAIR DEALER REGISTRATION NO. 277740)

19. As a first cause of discipline, complainant alleged respondent Abe's Automotive Repair Dealer Registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1). Specifically, complainant alleged respondent Abe's Auto Repair falsely certified that the seven vehicles identified at Factual Finding 11 were compliant with smog-related statutes and regulations by "conduct[ing] the inspection of the seven vehicles . . . using the clean-plugging methods in that it substituted or used a different vehicle(s), or another source or failed to report the results of the vehicles identified during the OBD II functional tests in order to issue smog certificates of compliance for vehicles. Respondent Abe's Auto Repair did not test or inspect any of the seven vehicles as required by Health and Safety Code section 44012." (Exh. 1, p. A9.) Complainant made the identical allegations against Respondent Abe's Auto Repair at the Twelve Cause for Discipline regarding the vehicles listed at Factual Finding 14.

20. Complainant's evidence in support of the first and twelfth causes for discipline is circumstantial: the resulting data in the first and second data reviews captured by the VID reflected unexpected values. Therefore, the inspection must have been the result of respondents' use of the clean plugging method. Respondent

Chakarian, however, credibly testified he is the sole smog inspector at Abe's Auto Repair, he does not engage in clean plugging, and would not recognize a simulator attached to the vehicles he inspects. Therefore, he could have inadvertently caused the false compliance certificate to issue. While such practices reveal serious shortcomings in respondent Chakarian's skills and knowledge, they would not constitute clean plugging as complainant alleged. Additionally, even one of complainant's witnesses, Mr. Evans, acknowledged sometimes owners of vehicles, especially high-powered vehicles, remove emission control equipment to increase their horsepower. (Factual Finding 13.) It is not too far a leap of logic to infer that owners willing and able to interfere with emission control equipment would also be willing and able to install simulators in an effort to defeat the smog check process.

21. As noted at Legal Conclusion 6 above, where the direct evidence - here, the issuance of incorrect compliance certificates- gives rise to inconsistent inferences, judgment must go against the party bearing the burden of proof. Complainant only proved the seven vehicles in the first data review and the 14 vehicles in the second data review were likely clean-plugged. Complainant intended to prove by inference the bad actors engaging in clean-plugging were respondents. Considering respondent Chakarian's denial and Mr. Evans' testimony about owners' misconduct, however, and the absence of any evidence establishing whether an alternate vehicle or a simulator was used and, if a simulator was used, whether it was installed by the vehicle operator or owner or by respondents, any inferences regarding the source of culpability can go either way. Under these circumstances, complainant failed to establish by a preponderance of evidence that respondents were the source of the clean-plugging.

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**SECOND AND THIRTEENTH CAUSES FOR DISCIPLINE - FRAUD (AS TO
AUTOMOTIVE REPAIR DEALER REGISTRATION No. 277740)**

22. As the second and thirteenth causes for discipline, complainant alleged respondent Abe's Automotive Repair Dealer Registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4) "in that Respondent Abe's Auto Repair committed acts that constitute fraud by issuing electronic smog certificates of compliance for the seven vehicle . . ." (Exh. 1, p. A10) and the 14 vehicles reviewed during the second data review.

23. The Automotive Repair Act and its regulations do not include a definition of fraud. Generally, fraud will be found when an individual "intentionally or by design, misrepresents a material fact, or produces 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.)

24. Cause does not exist to discipline respondent Abe's Auto Repair's Automotive Repair Dealer Registration pursuant to section 9884.7, subdivision (a)(4) because a preponderance of evidence did not establish, as alleged, that respondent clean plugged the seven vehicles in the first data review and the 14 vehicles in the second data review. As with the first and twelfth causes of discipline addressed in Legal Conclusions 20 through 22, there are more than one inference to be drawn from the erroneous certificates of compliance issued by respondent Abe's Auto Repair. As such, complainant failed to meet his burden of proof to establish the second and thirteenth causes for discipline.

THIRD CAUSE FOR DISCIPLINE - MATERIAL VIOLATIONS OF AUTOMOTIVE REPAIR ACT (AS TO AUTOMOTIVE REPAIR DEALER REGISTRATION NO. 277740)

25. As the third and fourteenth causes of discipline, complainant alleged respondent Abe's Automotive Repair Dealer Registration is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(6) "in that Respondent Abe's Auto Repair failed in a material respect to comply with the provisions of this chapter or regulations adopted pursuant to it when he issued electronic certificates of compliance for the seven vehicles . . ." (Exh. 1, p. A10) in the first data review and the 14 vehicles in the second data review.

26. Cause exists to discipline respondent Abe'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 respondents issued certificates of compliance for the seven vehicles in the first data review and the 14 vehicles in the second data review based on false data transmitted to the Bureau, in contravention of the Automotive Repair Act and its regulations. Moreover, respondents cannot show that this misconduct was the result of a bona fide error. Respondent Chakarian stated during his testimony that he had no recollection of the particular vehicles at issue in this matter.

FOURTH AND FIFTEENTH CAUSES FOR DISCIPLINE - FALSE STATEMENTS ON A CERTIFICATE OF COMPLIANCE (AS TO AUTOMOTIVE REPAIR DEALER REGISTRATION NO. 277740.)

27. As the fourth and fifteenth cause of discipline, complainant alleged respondent Abe's Automotive Repair Dealer Registration is subject to discipline

pursuant to Business and Professions Code section 9889.22 "in that Respondent made false statements with regard to a material matter in a certificate of compliance when issuing electronic smog certificates of compliance for [the seven vehicles]" (Exh. 1, p. A11) in the first data review and the 14 vehicles in the second data review.

28. Cause does not exist to discipline respondent Abe's Auto Repair's Automotive Repair Dealer registration pursuant to Business and Professions Code section 9889.22, which provides that willfully made false statements in the entry of material matters related to the Motor Vehicle Inspection program is perjury. "Willful" is not defined in either the Automotive Repair Act or the Motor Vehicle Inspection Program. Under common law, "[t]he terms "willful" or "willfully" imply "simply a purpose or willingness to commit the act . . . Stated another way, the term 'willful' requires only that the prohibited act occur intentionally." (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1428 [penal code section prohibiting willful discharge of a firearm in a grossly negligent manner was not violated because the defendant did not think it was loaded, negating the mental state of intent to fire the gun to expel a bullet.] Underlined text added.) Here, complainant did not establish respondents intended to accomplish the prohibited act, i.e., erroneous certificates of compliance, but rather only that respondents intended to issue certificates that, as it happened, were erroneous.

FIFTH AND SIXTEENTH CAUSES FOR DISCIPLINE - VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM (AS TO SMOG CHECK STATION LICENSE NO. RC 277740)

29. As the fifth and sixteenth causes for discipline, complainant alleged respondent Abe's Auto Repair's Smog Check Station License is subject to discipline pursuant to Health and Safety Code section 44072.2 in that respondent Abe's Auto

Repair failed to: ensure emissions control tests were undertaken in accordance with procedures prescribed by the Department pursuant to Health and Safety code section 44012, subdivision (a); perform a visual and functional check of required emission control devices pursuant to Health and Safety code section 44012, subdivision (f); ensure the seven vehicles in the first data review and the 14 vehicles in the second data review were properly tested and inspected pursuant to Health and Safety Code section 44015, subdivision (b); and made false entries in certificates of compliance by certifying the vehicles had been inspected, when they had not.

30. Cause exists to discipline respondent Abe's Auto Repair's Smog Check Station License pursuant to Health and Safety code section 44072.2, subdivision (a) for failing to ensure that the emission control tests were in accordance with procedures prescribed by the Department as required by Health and Safety code section 44012, subdivision (a); for failing perform a visual and/or functional check of required emission as required by Health and Safety code section 44012, subdivision (f); and for issuing certificates of compliance without ensuring that the vehicles were properly tested and inspected as required by Health and Safety code section 44015, subdivision (b). Respondent Chakarian testified that he did not know how to check for the use of a simulator when conducting inspections thus his inspections necessarily suffered from the infirmities noted here.

31. Cause does not exist to discipline respondent Abe's Auto Repair's Smog Check Station License pursuant to Health and Safety code section 44072.2, subdivision (a) for willfully making false entries in certificates of compliance. As noted above, complainant did not establish respondents willfully undertook illegal actions such as making false entries.

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**SIXTH AND SEVENTEENTH CAUSES FOR DISCIPLINE - FAILURE TO COMPLY
WITH REGULATIONS PURSUANT TO THE MOTOR VEHICLE INSPECTION
PROGRAM (AS TO SMOG CHECK STATION LICENSE NO. RC 277740)**

32. As the sixth and seventeenth causes of discipline, complainant alleged respondent Abe's Auto Repair's Smog Check Station License is subject to discipline pursuant to Health and Safety Code section 44072.2 "in that Respondent Fast Lane Smog [*sic*] failed to comply" with several regulations as follows: (i) Abe's Auto Repair issued certificates of compliance without performing inspections in accordance with Regulation section 3340.42 in violation of Regulation section 3340.35; and (ii) Respondent filled out documents with information "causing such document to be false or misleading , or where the tendency or effect was to mislead or deceive customers, prospective customers, or the public" (Exh. 1, p. A12) in violation of Regulation section 3373.

33. Regulation section 3340.35 requires inspections to be conducted in compliance with the procedures in Regulation section 3340.42, including a visual inspection. A visual inspection would necessarily involve checking for modifications of emissions control equipment and simulators, something respondent Chakarian has stated he is unable to do. In the same causes for discipline, complainant alleges respondents caused documents to be false or misleading in violation of Regulation section 3373. Cause exists to discipline respondents' smog check license for failing to properly perform visual inspections pursuant to Health and Safety Code section 44072.2 in conjunction with Regulation section 3340.35 and 3340.42. Cause does not exist to discipline the smog check license for causing false information into the system pursuant to Regulation section 3373. Complainant failed to establish respondents caused the false information to be input into the system.

SEVENTH AND EIGHTEENTH CAUSES FOR DISCIPLINE - FRAUD (AS TO SMOG CHECK STATION LICENSE No. RC277740)

34. As the seventh and eighteenth causes for discipline, complainant alleged respondent Abe's Auto Repair's Smog Check Station is subject to disciplinary action pursuant to Health and Safety code sections 44072.2, subdivision (d) and 44072.10, subdivision (c) "in that Respondent Abe's Auto Repair committed acts involving dishonesty, fraud, or deceit whereby another injure by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program." (Exh. 1, p. A12.)

35. Cause does not exist to discipline respondent Abe's Auto Repair for violating Health and Safety code sections 44072.2, subdivision (d) and 44072.10, subdivision (c). Complainant failed to establish Respondents committed acts involving dishonesty, fraud, or deceit, all necessary elements of the seventh and eighteenth causes for discipline.

EIGHTH AND NINETEENTH CAUSES FOR DISCIPLINE - VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM (AS TO SMOG CHECK INSPECTOR LICENSE No. EO 639614)

36. As an eighth and nineteenth causes for discipline, complainant alleged respondent Chakarian's smog check inspector license is subject to disciplinary action pursuant to Health and Safety code sections 44072.2, subdivision (a) "in that Respondent Herrera-Ballestros [*sic*] failed to comply with" (Exh. 1, A13) with several sections of the Health and Safety code as follows: (i) failed to ensure that the emission

control tests were in accordance with Department procedures in violation of Health and Safety code section 44012, subdivision (a); failed to perform a visual and/or functional check of required emission control devices in violation of Health and Safety code section 44012, subdivision (f); failed to perform tests of the onboard diagnostic systems on those vehicles in accordance with Health and Safety code section 44012 in violation of Health and Safety code section 44032; willfully "made a false entry in a certificate of compliance by certifying that vehicles had been inspected when, in fact they had not." (Exh. 1, p A13.)

37. Cause exists to discipline respondent Chakarian's smog check inspector license pursuant to Health and Safety code section 44072.2, subdivision (a) for failing to ensure that the emission control tests were in accordance with procedures prescribed by the Department as required by Health and Safety code section 44012, subdivision (a); for failing perform a visual and/or functional check of required emission as required by Health and Safety code section 44012, subdivision (f); and for issuing certificates of compliance without ensuring that the vehicles were properly tested and inspected as required by Health and Safety code section 44015, subdivision (b). Respondent Chakarian testified that he did not know how to check for the use of a simulator when conducting inspections thus his inspections necessarily suffered from the infirmities noted here.

38. Cause does not exist to discipline respondent Chakarian's smog check inspector license pursuant to Health and Safety code section 44072.2, subdivision (a) for willfully making false entries in certificates of compliance. As noted above, complainant did not establish respondents willfully undertook illegal actions such as making false entries.

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NINTH AND TWENTIETH CAUSES FOR DISCIPLINE - FAILURE TO COMPLY WITH REGULATIONS PURSUANT TO THE MOTOR VEHICLE REGULATIONS PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM (AS TO SMOG CHECK INSPECTOR LICENSE NO. EO 639614)

39. As the ninth and twentieth causes for discipline, complainant alleged respondent Chakarian's Smog Check Inspector License is subject to disciplinary action pursuant to Health and Safety code section 44072.2, subdivision (c) by failing to comply with Regulations 3340.30, subdivision (a) and 3340.41, subdivision (c).

40. Regulation section 3340.30 sets out the general requirements for smog check inspectors including inspecting vehicles in accordance with Health and Safety code sections 44012 and 44035 and Regulation section 3340.42. Health and Safety Code section 44012 and Regulation section 3340.42 both require, among other things, a visual inspection of the subject vehicle's emission control components. Health and Safety section 44035 provides that a smog check station's license may be suspended or revoked for failing to meet applicable standards. It is not a cause for discipline. Regulation section 3340.41 provides: "No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information about the vehicle being tested."

41. Cause exists for disciplining respondent Chakarian's smog check inspector's license pursuant to Health and Safety code section Health and Safety code section 44072.2, subdivision (c) in conjunction with Regulation section 3340.30 in that respondent failed to properly undertake visual inspections of the 21 vehicles at issue. Cause does not exist to discipline Chakarian's smog check inspector's license pursuant

to Health and Safety code section Health and Safety code section 44072.2, subdivision (c) in conjunction with Regulation section 3340.41. Complainant failed to establish respondent Chakarian entered false information about the vehicle he tested.

TENTH AND TWENTY-FIRST CAUSES FOR DISCIPLINE - FALSE ENTRY ON A CERTIFICATE OF COMPLIANCE (AS TO SMOG CHECK INSPECTOR LICENSE NO 639614)

42. As the tenth and twenty-first causes for discipline, complainant alleged respondent Chakarian's smog check inspector license is subject to disciplinary action pursuant to Business and Professions Code section 9889.22 'in that Respondent willfully made false statements or entries with regard to a material matter in any oath, affidavit, certificate or compliance or noncompliance.'" (Exh. 1, p.A14.)

43. Cause does not exist to discipline respondent Chakarian's smog check inspector license based on violating Business and Professions Code section 9889.22. Complainant failed to establish respondent Chakarian willfully made any false statements.

ELEVENTH AND TWENTY-SECOND CAUSES FOR DISCIPLINE - FRAUD (AS TO SMOG CHECK INSPECTOR LICENSE NO. 277740)

44. As the eleventh and twenty-second causes for discipline, complainant alleged respondent Chakarian's smog check inspector license is subject to discipline pursuant to Business and Professions Code section 44072.2, subdivision (d) and 44072.10, subdivision (c), "in that Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the

emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

45. Cause does not exist to discipline respondent Chakarian for violating Health and Safety code sections 44072.2, subdivision (d) and 44072.10, subdivision (c). Complainant failed to establish Respondent Chakarian committed acts involving dishonesty, fraud, or deceit, all necessary elements of the eleventh and twenty-second causes for discipline.

Disposition

46. The Bureau's Guidelines for Disciplinary Orders and Terms of Probation (rev. March 2016) (Guidelines), identify factors to be considered in determining the appropriate level of discipline where cause for discipline has been established.

47. The Guidelines identify 15 aggravating, primarily addressing former disciplinary actions and failure to comply with corrective actions and court order, and 12 mitigating factors to be considered. The Guidelines also provide recommended penalties for some enumerated violations.

48. None of the listed aggravation factors applies here. Regarding mitigation factors, one factor is applicable to the instant case, absence of prior disciplinary action.

49. The Guidelines provide recommended penalties for some of the upheld causes for discipline: (i) failure to comply with the Automotive Repair Act or regulations (Two years' probation and optional probation terms 1, 2, 3c and 7); (ii) failure to comply with procedures for required testing at smog check station (five years' probation and optional probation terms 1, 2, 3a, 3c, 4, 5a, 6, and 7); improper

issuance of certificate of compliance (five years' probation and optional probation terms 1, 2, 3a, 4, 6, and 7); failure of smog check technician to comply with inspection, testing and repair regulations (five years' probation and optional probation terms 1, 2, 3a, 4, 6, 7); failure to comply with on-board diagnostic inspection test methods and standards (five years' probation and optional probation terms 1, 2, 3c, 4, 6, and 7).

50. Applying the aggravation and mitigation factors and the recommended penalties, respondents will be placed on five years' probation with standard terms and optional terms 1 (period of suspension), 3a (smog check technician training course), and 6 (restrictions on inspections requiring a smog check certification at a STAR station). Optional terms 2 (restitution when a monetary loss has been established), 3c (training related to auto repair), 4 (notification to employer), and 7 (supervision requirements) are not applicable to the instant case and are therefore not included.

Cost Award

51. Section 125.3 provides that a licensee found to have violated the applicable licensing statutes or regulations shall pay the reasonable costs of the investigation and enforcement of the care. Here, respondents were found to have violated some of the applicable provisions. As set out in Factual Finding 21, the costs total \$17,654.66.

52. The Bureau must evaluate several factors to ensure that cost recovery does not have a chilling effect on licensees' ability to exercise their rights to a hearing. (*Zuckerman v. State board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 (*Zuckerman*)). The Bureau may 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 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 position and whether respondent has raised a colorable challenge; the Bureau must consider a respondent's ability to pay; and the Bureau may not assess disproportionately large cost award when it has conducted a disproportionately large investigation to prove to prove that a respondent engaged in relatively innocuous misconduct.

53. Applying the *Zuckerman* factors, complainant established portions of 10 of the 22 causes for discipline (the 10 causes of discipline each contained multiple cause of discipline within them; in each case, complainant failed to prove all of these causes for discipline). Additionally, respondent used the hearing process to avoid the most serious disposition, outright revocation and invalidation of the licenses and registrations at issue, something complainant argued for at the conclusion of the hearing and respondent credibly testified that his financial situation is dire and he will have trouble paying costs at virtually any level. Under these circumstances, the cost award will be reduced by 80 % from \$17,654.66 to \$3,530.93.

ORDER

The following registration is invalidated and licenses are revoked:

Automotive Repair Dealer Registration Number ARD 277740 issued to Abraham Chakarian doing business as Abe's Auto Repair Center, Smog Check Station License Number RC 277740 issued to Abraham Chakarian doing business as Abe's Auto Repair Center, and Smog Check Station License number 639614 issued to Abraham Chakarian.

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The invalidation and revocations are stayed, however, and respondent Abe's Auto Repair Center and respondent Abraham Chakarian are placed on probation for five years on the following terms and conditions:

1. Actual Suspension

Respondents are suspended for two consecutive days beginning on the effective date of the Decision and Order.

2. Posting of Sign

During the period of suspension, respondents shall prominently post a sign or signs, provided by the Bureau, indicating the beginning and ending dates of the suspension. The signs shall be conspicuously displayed in a location open to and frequented by customers. The location of the sign shall be approved by the Bureau and shall remain posted during the entire period of actual suspension.

3. Training Course

During the period of probation, respondent Chakarian shall attend and successfully complete a Bureau-specified and approved training course in inspection, diagnosis, and/or repair of emission systems failures and engine performance applicable to the class of license held by respondents. Respondent Chakarian 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/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and respondents shall be prohibited from issuing any certificates of compliance or noncompliance until such proof is received.

4. Obey all Laws

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

5. Quarterly Reporting

During the period of probation, respondents shall report either by personal appearance or in writing as determined by the Bureau and 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.

6. Restrictions on inspection vehicles requiring a STAR Check certification at a STAR station.

Respondents shall not be permitted to issue certificates of compliance for any vehicles requiring smog check certification at a STAR station for their biennial smog check pursuant to Health and Safety code sections 44010.5 or 44014.7.

7. Report Financial Interests

Respondent Chakarian 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 of the respondents or any partner, 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.

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8. Access to Examine Vehicles and Records

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

9. Tolling of Probation

If, during probation, respondent Chakarian leaves California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, he shall notify the Bureau in writing within 10 days of the dates of departure and return, and 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 respondent Chakarian 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 Chakarian 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.

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10. 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.

11. 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 of 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.

12. Cost Recovery

Respondents shall jointly and severally pay the Bureau \$3,530.93 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 to the Bureau 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 on the costs ordered and past due, in addition to taking action based upon the violation of probation.

13. 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.

14. 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 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.

DATE: **03/08/2024**

Signed Copy on File
[Deena R. Ghaly \(Mar 8, 2024 10:29 PST\)](#)

DEENA R. GHALY
Administrative Law Judge
Office of Administrative Hearings