

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

In the Matter of the Accusation Against:

EL SMOG SARKIS ALAJAJYAN, OWNER

857 N. Maclay Avenue #4

San Fernando, CA 91340

Automotive Repair Dealer Registration No. ARD 279670

Smog Check Station License No. RC 279670

Lamp Station, Class A, License No. LS 279670, Class A

Brake Station, Class C, License No. BS 279670, Class C

and

SARKIS ALAJAJYAN

1620 N. San Fernando Blvd. #45

Burbank, CA 91504

Smog Check Inspector License No. EO 637248

Smog Check Repair Technician License No. EI 637248

Lamp Adjuster Class A License No. LA 637248, Class A

Brake Adjuster, Class A, License No. BA 637248, Class C

Case No. 77/19-13135

OAH No. 2020050410

Respondents.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on November 25, 2020.

IT IS SO ORDERED this 21 day of October, 2020.

Signature on File

GRACE ARUPO RODRIGUEZ

Assistant Deputy Director

Legal Affairs Division

Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
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EL SMOG, SARKIS ALAJAJYAN, OWNER

Automotive Repair Dealer Registration No. ARD 279670

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Lamp Station, Class A, License No. LS 279670

Brake Station, Class C, License No. BS 279670

and

SARKIS ALAJAJYAN

Lamp Adjuster, Class A, License No. LA 637248

Brake Adjuster, Class C, License No. BA 637248

Smog Check Inspector License No. EO 637248

Smog Check Repair Technician License No. EI 637248

Respondents.

Case No. 77/19-13135

OAH No. 2020050410

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on September 24, 2020, by video conference, in California.

Complainant Patrick Dorais was represented by Christine J. Lee, Deputy Attorney General (DAG). Respondent Sarkis Alajajyan represented himself and El Smog.

Documentary evidence and testimony were received and argument was made. The record closed and the matter was submitted for decision on September 24, 2020.

The ALJ hereby makes his factual findings, legal conclusions, and order.

SUMMARY

This matter concerns two vehicles that were documented by employees of the Bureau of Automotive Repair (Bureau) as having brakes which needed replacement. Respondent issued Certificates of Compliance indicating that the brakes were inspected and were in satisfactory condition. The registration, brake station license and brake adjuster license of Respondent are placed on probation for three years. Respondent is ordered to pay a portion of the costs of investigation and prosecution.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation in his official capacity as Chief of the Bureau, Department of Consumer Affairs (Department).
2. On March 19, 2015, the Bureau issued Automotive Repair Dealer (ARD) registration number ARD 279670 to Respondent, doing business (dba) as El Smog. The ARD registration will expire on March 31, 2021, unless it is renewed.
3. On January 25, 2018, the Bureau issued Smog Check Station license number RC 279670 to Respondent, dba El Smog. The Smog Check Station license will expire on March 31, 2021, unless it is renewed.
4. On January 25, 2018, the Bureau issued Lamp Station license number LS 279670, class A to Respondent, dba El Smog. The Lamp Station license will expire on March 31, 2021, unless it is renewed.
5. On January 25, 2018, the Bureau issued Brake Station license number BS 279670, class C to Respondent, dba El Smog. The Brake Station license will expire on March 31, 2021, unless it is renewed.
6. On August 28, 2014, the Bureau issued Smog Check Inspector license number EO 637248 to Respondent. The Smog Check Inspector license will expire on October 31, 2020, unless it is renewed.
7. On October 17, 2017, the Bureau issued Smog Check Repair Technician license number EI 637248 to Respondent. The Smog Check Repair Technician license will expire on October 31, 2021, unless it is renewed.

8. On October 30, 2015, the Bureau issued Brake Adjuster license number BA 637248, class C to Respondent. The Brake Adjuster license expired on October 31, 2019. Respondent testified without contradiction that he was issued a renewed Brake Adjuster license in June 2020. There was no evidence when this most recent Brake Adjuster license will expire.

9. On November 12, 2015, the Bureau issued Lamp Adjuster license number BA 637248, class A to Respondent. The Lamp Adjuster license expired on October 31, 2019. Respondent testified without contradiction that he was issued a renewed Lamp Adjuster license in June 2020. There was no evidence when this most recent Lamp Adjuster license will expire.

10. Respondent was the brake inspector who performed the two brake inspections that are alleged in the Accusation.

11. After the Accusation was served, Respondent filed a Notice of Defense, requesting an administrative hearing. All jurisdictional requirements have been met.

Brake Test Procedure and Certificate of Compliance

12. When requested by a consumer, the holder of a brake adjuster license must perform an inspection to determine whether the brakes of a vehicle conform with requirements in the Vehicle Code. A Certificate of Compliance-Brake Adjustment utilizes check boxes for specific brake system components and blanks for the inspector to fill. After visual inspection, measurements, and a road test, the inspector will verify if the brake system is in satisfactory condition. For example, checking the box marked "Drums/Rotors" indicates that dimensions/thickness of the brake drums and/or rotors are within the manufacturer's specifications.

13. The Certificate of Compliance-Brake Adjustment has the following statement above the adjuster's signature:

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

14. No findings are made about lamp adjustments because the Accusation does not allege the lamp inspections performed by Respondent were deficient.

Inspections at El Smog

15. Employees of the Bureau documented two vehicles for undercover use: a 2007 Nissan Maxima SE (2007 Nissan) and a 2001 Nissan Maxima GXE (2001 Nissan). On each vehicle, the brake rotors for the left front and right rear wheels were worn below the manufacturer's minimum thickness specification.

16. On August 15, 2019, an undercover operator drove the 2007 Nissan to El Smog and requested brake and lamp inspections. The operator paid for the inspections. Respondent issued Certificate of Compliance-Brake Adjustment no. BA 3121273 to the operator. When the operator returned the vehicle to the Bureau, a Bureau employee determined that the brake rotors for the left front and right rear wheels were still worn below the manufacturer's minimum thickness specification.

17. On September 19, 2019, an undercover operator drove the 2001 Nissan to El Smog and requested brake and lamp inspections. The operator paid for the inspections. Respondent issued Certificate of Compliance-Brake Adjustment no. BA 3121378 to the operator. When the operator returned the vehicle to the Bureau, a Bureau employee determined that the brake rotors for the left front and right rear wheels were still worn below the manufacturer's minimum thickness specification.

18. Respondent should not have issued the Certificates because of the worn brake rotors. The Certificates issued by Respondent contained false and misleading information, which El Smog and Respondent knew, or should have known, to be false. The conduct of El Smog and Respondent in connection with the two inspections, and the issuance of the associated Certificates of Compliance, was fraudulent, and contrary to the health, safety, and welfare of the State of California and its citizens.

Respondent's Testimony; Other Matters

19. The first subject of Respondent's testimony at the hearing was to take full responsibility for the "two unlawful inspections." He offered no excuses.

20. Respondent cooperated with a Bureau representative who came to discuss the Certificates and gather documents. He testified credibly that, after that visit, he "took a step back" and planned how to improve his knowledge and experience before taking the test for re-licensure as a brake adjuster. Respondent took online courses in mechanical and brake subjects at American Pacific Career College and Penn-Foster.

21. To increase his knowledge and get hands-on experience, Respondent volunteered at a brake shop from November 2019 through February 2020. Due to the COVID-19 pandemic, he could not take the licensing test for many months.

Respondent took and passed the brake and lamp adjuster licensing tests in June 2020, and his licenses were renewed.

22. Despite limited funds, Respondent purchased new tools and a vehicle hoist for his shop. He believes that, with the combination of more education and experience, and better equipment, he is able to properly perform inspections.

23. For the first three years after Respondent opened his station, he did not perform many brake or lamp inspections. More recently, he estimates that 18 percent of his business is for brake and lamp inspections, and the rest is smog testing and vehicle repairs. Although he could still do business without the brake and lamp adjuster licenses, the pandemic has had a dramatic effect on him financially. His business is down about 75 percent, he has lost many customers, he has lost money operating the business in the last few months, and he is behind on his bills. Respondent testified that he has lost a lot, financially and otherwise.

24. Respondent is the sole support of his ex-wife and two young children, all of whom live with him. When asked about his ability to pay several thousands of dollars of costs, Respondent stated that it would be very difficult.

25. Respondent was sincere and believable in testifying that he has learned from his mistakes and took the online courses, did volunteer work, and purchased tools and equipment to become a better inspector. His demeanor demonstrated appreciation for the serious nature of the proceedings.

Costs

26. The Bureau has incurred costs of investigation (\$4,399.28) and prosecution (\$7,142.50) of this matter, in the total amount of \$11,541.78. Under the terms of the cost recovery statute, discussed below, these costs are reasonable.

Miscellaneous

27. Except as set forth in this Proposed Decision, all other arguments and evidence submitted by the parties are found to lack merit or deemed surplusage.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter exists under Health and Safety Code sections 44002 and 44072.4, which relate to enforcement of the motor vehicle inspection program, and Business and Professions Code sections 9884.2 and 9889.1, which relate to licenses issued under the Automotive Repair Act (Business and Professions Code section 9880 et seq.), based upon Factual Findings 1 through 9. The Bureau retains jurisdiction to proceed with a disciplinary action against any expired licenses. (Health & Saf. Code, § 44072.6; Bus. & Prof. Code, §§ 118, 9884.13, and 9889.7.)

2. Registrations or licenses may be revoked or suspended, after a hearing, for violations of laws relating to the duties and requirements for licensees, under Business and Professions Code sections 9884.22 and 9889.1. Disciplinary action may also include imposing license probation upon terms and conditions, under Business and Professions Code section 9889.5. In reaching an outcome, the Bureau shall

consider the disciplinary guidelines referenced in California Code of Regulations, title 16 (Regulations), section 3395.4.

3. Under Business and Professions Code section 9889.3, the director may suspend or revoke a license if a licensee:

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

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

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

4. Under Health and Safety Code section 44072.2, subdivision (d), the licenses of a smog check station and a smog check inspector can be disciplined for violating any statutes or regulations related to the license, or for committing any act involving dishonesty, fraud, or deceit whereby another is injured.

5. Procedures for proper performance of brake adjustments and certification are found in Regulations, sections 3305 and 3321. In summary, brake system inspection and adjustment shall be performed in official stations by official adjusters in accordance with vehicle manufacturers' specifications. A brake adjustment certification shall be issued when, after the brake system has been inspected and tested, including road-testing, the system meets all requirements of the Vehicle Code and Bureau regulations.

6. Business and Professions Code section 9889.16 requires a brake adjuster to determine if the brakes conform to the requirements of the Vehicle Code and, if so, to issue a certificate of adjustment on a required form.

7. Under Regulations, section 3373, no ARD may include any false or misleading information in any required record.

8. Under Business and Professions Code section 9889.9, if any license issued by the Bureau under that part of the Code is disciplined, any other licenses issued by the Bureau may be disciplined. Under Health and Safety Code section 44072.8, if any license issued by the Bureau under that part of the Code is disciplined, any other licenses issued by the Bureau may be disciplined.

9. When an ARD cannot show there was a bona fide error, the Director of Consumer Affairs may revoke the automotive repair dealer's ARD registration if any of the following occur: the dealer or any employee makes or authorizes any statement 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; conducts an act that constitutes fraud; fails to materially comply with the provisions of the Automotive Repair Act or its regulations; or for any willful departure from or disregard of accepted trade standards for good and workmanlike repair. (Bus. & Prof. Code, § 9884.7, subd. (a)(1), (4), (6), & (7).)

10. The Accusation lists 10 causes for discipline, some against El Smog's ARD registration and smog check station, lamp station, and brake station licenses, some against Respondent's smog inspector and technician licenses, and some against Respondent's brake and lamp adjuster licenses. To support the imposition of discipline, the Bureau must prove the allegations by a preponderance of the evidence.

(Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair (2011) 201 Cal.App.4th 911, 916-917.) 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.)

Causes for Discipline

11. **First Cause for Discipline** (Untrue or Misleading Statements; ARD registration): El Smog's ARD registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which were known or in the exercise of reasonable care should have been known to be untrue or misleading. As set forth in Factual Findings 15 through 18, Respondent certified the brakes of two vehicles when he did not properly inspect them and did not discover that the brake rotors were below the manufacturer's specification for minimum wear.

12. **Second Cause for Discipline** (Fraud; ARD registration): El Smog's ARD registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud. As set forth in Factual Findings 15 through 18, Respondent misrepresented to the vehicles' operators that the two vehicles had been inspected and the brakes complied with legal requirements. Respondent accepted payment and intended the operator to rely on his misrepresentations.

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13. **Third Cause for Discipline** (Failure to Comply with the Automotive Repair Act¹; ARD registration): El Smog's ARD registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Business and Professions Code section 9889.16, in that Respondent issued brake adjustment certificates to non-conforming vehicles, as set forth in Factual Findings 15 through 18.

14. **Fourth Cause for Discipline** (Failure to Comply with Regulations; ARD registration): El Smog's ARD registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulations sections 3321, subdivision (c)(2) (issuing certifications falsely stating that the brakes had been properly inspected), and 3373 (filling out a required form with information causing the document to be false or misleading). Respondent issued brake adjustment certificates to non-conforming vehicles, as set forth in Factual Findings 15 through 18.

15. **Fifth Cause for Discipline** (Certificates Issued to Non-Conforming Vehicles; brake and lamp station licenses): El Smog's brake and lamp station licenses are subject to discipline under Business and Professions Code section 9889.16 and Regulations, section 3321, subdivision (c)(2) (inspection and issuance of certificate), as set forth in Factual Findings 15 through 18. After purportedly inspecting the two vehicles in conformity with legal requirements, Respondent issued passing brake certificates when the vehicles failed to conform with legal requirements. No cause for

¹ The Accusation incorrectly refers to the Automobile Repair Act, page 12, lines 2 and 7.

discipline was established for violating Regulations, section 3316, subdivision (d)(2), which relates to lamp adjustments.

16. **Sixth Cause for Discipline** (Dishonesty, Fraud or Deceit; brake and lamp station licenses and smog check station license): El Smog's brake station license is subject to discipline under Business and Professions Code section 9889.3, subdivisions (a) and (d), and Regulations, section 3373, and El Smog's smog check station license is subject to discipline under Health and Safety Code sections 44072.2, subdivision (b), and 44072.10, subdivisions (a) and (c), for the reasons set forth in Factual Findings 15 through 18. El Smog committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing certificates of adjustment for two vehicles without performing inspections, thereby depriving the People of the State of California of the protection afforded by the Automotive Repair Act.

17. **Seventh Cause for Discipline** (Violations of Regulations; brake and lamp station licenses): El Smog's brake station license is subject to discipline under Business and Professions Code section 9889.3, subdivision (c), in that Respondent violated the following Regulations: section 3321, subdivision (c)(2) (falsely issuing brake certificates stating that the brake systems had been inspected in accordance with legal requirements), and section 3373 (by filling out a required form with information causing the document to be false or misleading), as set forth in Factual Findings 15 through 18.

18. **Eighth Cause of Discipline** (Dishonesty, Fraud or Deceit; smog check station license): El Smog's smog check station license is subject to discipline pursuant to Business and Professions Code section 9889.3, subdivisions (a) and (d), Regulations, section 3373, and Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivisions (a) and (c). As set forth in Factual Findings 15 through 18, El

Smog committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing certificates of adjustment for vehicles without performing inspections, thereby depriving the People of the State of California of the protection afforded by the Automotive Repair Act.

19. **Ninth Cause of Discipline** (Violation of the Business and Professions Code; brake adjuster and lamp adjuster licenses): Respondent's brake adjuster license is subject to discipline under Business and Professions Code section 9889.3, subdivision (a). As set forth in Factual Findings 15 through 18, Respondent issued brake adjustment certificates to non-conforming vehicles in violation of Business and Professions Code section 9889.16.

20. **Tenth Cause for Discipline** (Violation of Regulations; brake adjuster and lamp adjuster licenses): Respondent's brake adjuster license is subject to discipline under Business and Professions Code section 9889.3, subdivision (c), for violating Regulations, section 3305, subdivision (a) (failure to inspect brake systems in accordance with current specifications issued by the Bureau and the vehicle manufacturer), and Regulations, section 3321, subdivision (c)(2) (falsely issuing brake certificates stating that the brake systems had been inspected in accordance with legal requirements), as set forth in Factual Findings 15 through 18.

21. Fraud as a basis for license discipline is included in several of the statutes and regulations cited above. "Fraudulent inspection" is defined as including "[i]ntentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter." (Health & Saf. Code, § 44072.10, subd. (c)(4).)

22. The term “willful” is not defined in either the Business and Professions Code or the Health and Safety Code. When a term used within one code is not defined in that code, the term may be defined by reference to a different code. (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 554.) Penal Code section 7 states, in relevant part: “1. The word ‘willfully,’ when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.” “The evil therefore is not in the intent to do harm, but in falsely certifying facts which are not true.” (*Brown v. State Department of Health, supra*, at p. 555 [referring to false statements in Medi-Cal bills].) The terms “willful” or “willfully” imply “simply a purpose or willingness to commit the act, . . . without regard to motive, intent to injure, or knowledge of the act’s prohibited character The terms imply that the person knows what he is doing, intends to do what he is doing, and is a free agent. . . . Stated another way, the term ‘willful’ requires only that the prohibited act occur intentionally. . . .” (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438; citations omitted.)

23. In the recent decision of *Acco Engineered Systems, Inc. v. Contractors’ State License Bd.* (2018) 30 Cal.App.5th 80, the court recognized that the definition of “willfully” from Penal Code section 7 has been adopted in other cases involving discipline of licensees in other professions, and would be applied in that case to statutes describing violations by contractors. The court rejected the argument that liability would be precluded where a licensee acted in good faith.

24. The only intent required is the general intent to act; in this case, the intent to indicate that the brake system was inspected and passed, and to issue a certificate. There was no evidence to the contrary; rather, the evidence supports the

finding that Respondent willfully engaged in fraudulent inspections to pass the two subject vehicles and issue certificates of compliance.

Costs

25. Business and Professions Code section 125.3 provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Under Business and Professions Code section 125.3, subdivision (c), there is a presumption that costs are reasonable if they are established by submitting certified copies of the actual costs. Reasonable costs in this case are \$11,541.78, as set forth in Factual Finding 26.

26. Several factors must be considered before determining the award of costs. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize the 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 prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman, supra* at p. 45.)

27. To apply all of this to the case at hand, it would not be fair or equitable to make Respondent pay the full costs of investigation and prosecution. Respondent used the hearing process to obtain a reduction in the severity of the penalty. Respondent has suffered loss of business and financial losses, is operating his business at a loss, and has a limited ability to pay. Considering that the case involved two cars with brake issues only, the amount of costs claimed is disproportionately large. Therefore, costs of investigation and prosecution are reduced to \$3,000. Respondent will be permitted to have a payment plan.

Discussion and Disposition

28. Having found evidence to support all 10 causes of discipline, it is necessary to determine the appropriate level of discipline. To that end, the Bureau has issued Guidelines for Disciplinary Penalties and Terms of Probation (Guidelines) under the authority of Regulations, section 3395.4, which include factors in aggravation and mitigation. The relevant aggravating factor here is that Respondent's conduct constitutes fraud. Respondent has no history of prior citations. (Guidelines, pp. 1-2.) Mitigation factors outlined in the Guidelines that apply to Respondent include his voluntarily participation in retraining, and his purchase of equipment to assist in proper discharge of his duties and responsibilities and to increase his knowledge and experience. These factors assure the Bureau and the public that, to minimize recurrence, Respondent has changed his practices to conform to the law. (Guidelines, p. 3.)

29. The Guidelines set forth ranges of discipline for specific statutory and regulatory violations. For the statutes and regulations in the 10 causes for discipline alleged in the Accusation, the recommended discipline ranges from license revocation, to probation of two to five years, to license suspension. More specifically,

recommended minimum penalties vary, from a minimum of 90-day license suspension with 80 days stayed for making untrue or misleading statements in violation of Business and Professions code section 9884.7, subdivision (a)(1), to revocation stayed, with five years of probation, and a 30-day suspension for conduct constituting fraud in violation of Business and Professions code section 9884.7, subdivision (a)(4). The Guidelines also include recommended language for conditions of a license placed on probation.

30. Health and Safety Code section 44072.10, subdivision (c), mandates license revocation for any smog check technician or station licensee who participates in the fraudulent inspection of vehicles, which was established here. Under the authority of Government Code section 11519, subdivisions (a) and (b), a decision after an administrative hearing may include a stay of execution of the penalty and the condition that a respondent comply with specified terms of probation.

31. The statutes relating to licensing generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

32. Here, Respondent perpetrated two improper inspections and certifications within five weeks in 2019. Considering his evidence of rehabilitation, including acknowledgment of responsibility and new procedures to prevent

recurrence, a probationary order will be imposed on Respondent's brake adjuster license and El Smog's ARD registration and brake station license.

33. Various statutes permit imposition of discipline on Respondent's ARD registration and other licenses that he holds for the violations established herein. (See, e.g., Bus. & Prof Code, §§ 9884.7, subd. (c), 9889.9, and Health & Saf. Code, § 44072.8.) Probation is ordered for Respondent's brake adjuster license and El Smog's ARD registration and brake station license, as they are directly related to Respondent's brake inspections and certifications. No discipline is imposed against El Smog's and Respondent's other licenses, as Respondent's actions only peripherally and technically established violations of those other licensing statutes.

ORDER

Automotive Repair Dealer registration number ARD 279670 and Brake Station license number BS 279670, issued to Respondent Sarkis Alajajyan, doing business as El Smog, and Brake Adjuster license number BA 637248 issued to Respondent Sarkis Alajajyan, are hereby revoked. The revocations are stayed for a period of three years under the following conditions.

1. The registration, brake station license and brake adjuster license are suspended for 10 days.
2. During the period of probation, Respondent shall comply with all statutes, regulations and rules governing brake inspections, repairs, and certifications.
3. During the period of probation, Respondent shall post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension

and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

4. During the period of probation, Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

5. Respondent shall, within 30 days of the effective date of this decision, report any financial interest which Respondent or any partners may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

6. During the period of probation, Respondent shall provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

7. If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision is issued.

8. Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, suspend or revoke the registration and licenses.

9. Upon successful completion of probation, Respondent's registration and brake station license and brake adjuster license shall be fully restored.

10. Respondent shall pay costs of investigation and prosecution to the Bureau in the amount of \$3,000. during the period of probation on a schedule to be approved by the Bureau, but at a rate not greater than \$100 per month.

DATE: September 30, 2020

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings