

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

In the Matter of the Accusation and Petition to Revoke Probation Against:
ECMB SERVICES, INC. dba 1ST STOP CAR CARE & SMOG; MIGUEL BELTRAN,

PRESIDENT

3008 N. 2nd Ave.

Chula Vista, CA 91910

Automotive Repair Dealer Registration No. ARD 283712

Smog Check Station License No. RC 283712

Brake Station License No. BS 283712

Lamp Station License No. LS 283712

Respondent.

Case No. 77/22-19198

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DECISION

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

This Decision shall be effective on November 21, 2024.

IT IS SO ORDERED October 8, 2024.



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

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Respondent

Agency Case No. 77/22-19198

OAH No. 2024010564

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings,
State of California, heard this matter on July 10, 2024, by videoconference.

Deputy Attorney General Dionne Mochon represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Attorney William Ferreira represented respondent ECMB Services, Inc., doing business as 1st Stop Car Care & Smog, Miguel Beltran, President. Miguel Beltran was present throughout the hearing.

The record was closed, and the matter was submitted for decision on July 10, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 24, 2016, the Bureau of Automotive Repair (bureau or BAR) issued automotive repair dealer (ARD) registration number ARD 283712 to respondent. The registration will expire on May 31, 2025, unless renewed.

2. On May 17, 2021, the bureau issued smog check, test and repair, station license number RC 283712 to respondent. The registration will expire on May 31, 2025, unless renewed.

3. On May 17, 2021, the bureau issued lamp station license number LS 283712 to respondent. The license expired on May 31, 2024, and has not been renewed.

4. On May 17, 2021, the bureau issued brake station license number BS 283712 to respondent. The registration will expire on May 31, 2025, unless renewed.

5. On October 12, 2023, complainant in his official capacity issued an accusation and petition to revoke probation against respondent. The accusation sought to revoke respondent's licenses for conduct constituting fraud, making untrue and/or misleading statements, and failing to comply with the Automotive Repair Act (Act). Those same allegations formed the basis for revoking respondent's probation. Respondent timely filed a notice of appeal and this hearing ensued.

Disciplinary History

6. A stipulated settlement and disciplinary order, effective October 12, 2022, placed respondent's licenses on probation for a term of three years with terms and conditions that included obeying all laws and regulations.

7. On October 12, 2022, a probation conference was held. Miguel Beltran, President, attended the conference where the terms and conditions of probation were discussed, and respondent presented a plan to ensure compliance with the terms and conditions of probation. The plan was replacing the manager, removing the technician that performed the work, and improving documentation.

8. The conduct which precipitated the discipline was that two undercover vehicles were sent to respondent, both with low front brake pads. In all other respects, the braking system was in good condition.

On the first vehicle, the technician told the undercover operative that there was water in the brake fluid which contaminated the brake fluid and would lead to erosion and damage to the seals. The repair would be a brake fluid flush. The technician also stated there was a leak from the right rear brake line that required replacement of both brake lines. Respondent replaced the brake pads on the first vehicle, machined the front brake rotors, replaced the right rear brake hose, and performed an

incomplete brake fluid bleed. The brake fluid that was in the vehicle was new and did not need to be replaced. The brake hoses were in good condition and did not need to be replaced.

On the second vehicle, respondent replaced the front brake pads and machined the front brake rotors. Respondent's machining of the front brake rotors caused them to be out of specification with runout measurements. The front brake rotors did not need to be machined in either case.

Undercover Operation

9. On December 29, 2022, the bureau sent an undercover operator with a 2001 Pontiac Firebird (Firebird) to respondent to verify that respondent was complying with the probation terms.

10. BAR Program Representative (PR) John Chronister prepared the Firebird for the undercover operation. PR Chronister has worked for the bureau for four years. He currently holds smog inspection, smog repair technician, brake, and lamp adjustment licenses.

11. On February 1, 2022, Chronister began documenting the condition of the Firebird's brake system. Chronister noted that the vehicle was a 3.8 liter six-cylinder engine equipped with front and rear disc brakes. Chronister measured the thickness of the brake rotors. The right front brake rotor measured 1.259 inches. The left front brake rotor measured 1.261 inches. The minimum thickness for the front brake rotors is 1.209 inches. Both rear brake rotors measured 1.020 inches. The minimum thickness for the rear brake rotors is 0.965 inches.

12. On November 30, 2022, Chronister removed the front brake pads and machined the lining of the pads to a thickness where replacement would be an appropriate repair.

13. On December 1, 2022, Chronister inspected, and road tested the Firebird and it performed normally except for a squeaking noise coming from the front brakes.

14. Chronister took photographs of the Firebird both before and after the modifications. He made a mark on both the front and rear brake pads and rotors.

15. On December 29, 2022, Chronister transported the Firebird by truck and released it into the custody of BAR PR Eric Estremera.

16. Estremera then gave the vehicle to a bureau undercover operative and told her to take it to respondent and request a brake inspection.

17. The bureau undercover operative drove the Firebird to respondent and requested a brake inspection. She stated that the brakes felt "off" when she was driving to respondent. She was assisted by an employee named George. George asked if the car was a Trans Am and she told him it was a Firebird. George then asked if she wanted an oil change and she declined. George printed an estimate for the inspection and had her sign it. George told her he would call her in three hours.

18. The estimate incorrectly identified the vehicle as a Firebird Trans Am with a 5.7-liter, V8 engine and also the last four digits of the undercover operative's phone number, which she noted and corrected. The charge for the brake inspection listed on the estimate was \$45.

19. When George called her, he asked if her brake pads had been recently replaced. He recommended a brake system flush, stating the brake fluid appeared

dirty, and replacement of the front brake pads and rotors for a total of \$636. She approved those repairs.

20. When the repairs were completed, it was noted that she did not need a brake system flush. The final invoice stated that a brake inspection and "front brake job" had been completed and the total cost was \$525.05. She picked up the Firebird and returned it to Estremera who then returned it to Chronister.

21. On January 3, 2023, Chronister received a copy of the invoice from respondent for the brake repairs to the Firebird. He stated that the invoice incorrectly listed the measurement of the thickness of the left front rotor as "1206," and the right front rotor as 1.193. The invoice stated the left rear rotor measured .970, and the right rear rotor measured .950. The invoice incorrectly stated the minimum thickness measurement for the rear rotors as .963.

22. On January 4, 2023, Chronister inspected the Firebird and test drove it. It drove normally. Chronister inspected the front brake pads and rotors and found that they had been replaced. Chronister inspected and photographed the rear rotors. They still had the marks he had made on them. Chronister measured the thickness of the rear rotors, and both measured 1.020. Chronister concluded that respondent had unnecessarily replaced the front rotors and incorrectly measured the rear rotors.

Respondent's Evidence

23. Jorge Salazar testified on behalf of respondent. His testimony is summarized as follows. He has worked for respondent since 2011. He is a salesperson for respondent. His duties include writing up the customers' issues and assigning the work to a technician. He has been in the automotive repair industry for 25 years. He worked as a mechanic/technician for 15 years. While he was a mechanic, he completed

over 100 brake repairs. He last worked as a mechanic a "long time ago." He interacted with the undercover operator. He assigned the work to a technician named Jose. He did not remember Jose's last name, because he only worked with him for a few months.

He misidentified the car as a Firebird Trans Am with a 5.7-liter, 8-cylinder engine but it did not matter because the brake pads and rotors are the same for both cars. He did recommend a brake flush to the undercover operator, but it was not performed, and she was not charged for it. Given the measurements Jose provided for the rotors, it would have been dangerous to allow the car to be driven without replacing them. He had no explanation for why the rear rotors, which according to the measurements Jose provided were also under replacement levels, were not replaced or even recommended to be replaced.

24. Miguel Beltran has owned and operated respondent since 2005. He has been working on cars since he was 18 years old. He worked his way up from a part-time automotive parts salesperson to owning a shop. Beltran prides himself on providing excellent customer service. After he was informed of the incorrect measurements, he bought new micrometers, both digital and analog. The micrometer is the device used to measure the thickness of brake rotors. Beltran has implemented a new brake and lamp inspection process which requires the technician to first measure a "control rotor" to ensure the micrometer is calibrated. The technician that performed the repairs on the Firebird is no longer employed by respondent. Beltran stated he is doing everything he can to ensure that respondent is compliant with both the law and the terms of probation.

25. Respondent insists that the measurements of the brake rotors was a bona fide mistake for which it should not be disciplined. In the alternative, respondent

asked that if discipline were to be imposed, that it would consist of a suspension and an extension of probation.

Costs

26. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$12,307.91. These costs reflect \$6,247.50 in enforcement costs, \$660 in estimated enforcement costs, and \$5,400.41 in investigative costs. The request for actual costs totaling \$11,647.91, is supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. These costs are reasonable. The request for estimated enforcement costs did not explain why the actual costs information was not available. These costs are not reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code¹ section 9884.7, subdivision (a)(1), authorizes the director to suspend, revoke, or take other disciplinary action against the registration of an automotive repair dealer for making a written or oral 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, unless the automotive repair dealer can show there was a bona fide error.

¹ All subsequent statutory references are to the Business and Professions Code, unless otherwise noted.

2. Section 9884.7, subdivision (a)(4), authorizes the director to suspend, revoke, or take other disciplinary action against the registration of an automotive repair dealer for engaging in conduct that constitutes fraud.

3. California Code of Regulations, title 16, section 3371, prohibits an automotive repair dealer from publishing, uttering, or making a false or misleading statement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading.

4. Section 9884.7, subdivision (a)(6), authorizes the director to suspend, revoke, or take other disciplinary action against the registration of an automotive repair dealer for failure in any material respect to comply with the automotive repair laws and regulations.

5. California Code of Regulations, title 16, section 3373, prohibits an automotive repair dealer from filling out an estimate, invoice, or work order, with a statement or information which would cause the document to be false or misleading.

Probation Revocation

6. The first term of respondent's probation is to obey all state statutes, regulations, and rules governing all BAR registrations and licenses held by respondent.

Discussion

7. Respondent was placed on probation for telling a customer misleading statements that led to unnecessary repairs. Less than three months later, respondent informed a customer that their brake fluid was dirty and needed to be replaced, and that the front and rear brake rotors measurements were below specifications. Respondent replaced the front brake pads and rotors but did nothing to address the

rear rotors that it claimed were also measured below specifications. While the customer was not charged for a brake fluid flush, respondent made a statement to the customer to induce an approval for an unnecessary repair that was false.

8. Respondent's measurements of the rear right and both front rotors were all below specifications and if accurate would require replacement of all three of those rotors. However, respondent only replaced the front rotors. When the vehicle was returned to PR Chronister, he measured the rear rotors and found both to be well above specifications. Furthermore, the rear rotor measurements that Chronister recorded were the same both before and after the Firebird was taken to respondent. Respondent failed to demonstrate that the measurements of the front and rear brake rotors were a bona fide mistake.

9. Respondent made an oral false statement to the undercover operator regarding the brake fluid being dirty. Respondent argued that there was no harm to the customer because they were not charged for the brake fluid flush. The statutes and regulations prohibit the making of a false statement. Cause exists to impose discipline upon respondent's licenses for making a misleading or untrue statement.

10. Respondent's measurements of the front and right rear brake rotors were incorrect and led directly to the consumer being charged for an unnecessary repair. This constituted fraud. Cause exists to impose discipline upon respondent's licenses for conduct constituting fraud.

11. The final invoice listed the incorrect measurements for the front and right rear brake rotors, causing the document to be false or misleading. Cause exists to impose discipline upon respondent's licenses for filling out an invoice with a statement that caused the document to be false or misleading.

12. By violating the rules and regulations listed above, respondent has violated the terms of probation. Cause exists for the revocation of respondent's licenses.

13. Having established cause for discipline against respondent's license, the issue is what level of discipline to impose. The bureau set forth factors to be considered when determining the appropriate discipline in its Guidelines for Disciplinary Orders and Terms of Probation (rev. June 2021) (Guidelines).

14. The Guidelines also set forth the recommended discipline for violations. For a violation of Section 9884.7, subdivision (a)(1), the Guidelines recommend stayed revocation with a three-year term of probation. For a violation of Section 9884.7, subdivision (a)(4), the Guidelines recommend stayed revocation with a five-year term of probation. For a violation of Section 9884.7, subdivision (a)(6), the Guidelines recommend stayed revocation with a two-year term of probation. For a violation of California Code of Regulations, title 16, sections 3371 and 3373, the Guidelines recommend stayed revocation with a three-year term of probation.

15. Pursuant to the Guidelines, aggravating factors to be considered are prior history of discipline, and whether the licensee engaged in conduct which constitutes fraud or gross negligence. Mitigating factors are evidence of voluntary purchase of proper diagnostic equipment, initiating steps to minimize recurrence, evidence of substantial measures to correct its business practices or operations to minimize the likelihood of recurrence of the violation and any other conduct which would constitute a factor in mitigation.

16. Respondent had been on probation for less than 90 days when this incident occurred. The discipline was imposed for similar conduct. Respondent has

purchased new micrometers, and the technician involved in this incident is no longer employed by respondent. Furthermore, respondent has initiated new procedures to ensure that all measurements of brake rotors are accurate. Given these circumstances, public protection does not require the revocation of respondent's licenses. However, this conduct does require discipline be imposed upon respondent's licenses in the form of a suspension and extension of probation.

Costs

17. Business and Professions Code section 125.3 authorizes the bureau to recover its reasonable costs of investigation and enforcement in disciplinary proceedings. As set forth in Finding 17, complainant has reasonably incurred \$11,827.91 in investigation and prosecution costs in connection with this matter.

18. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court established standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees are not deterred from exercising their right to an administrative hearing. Among those standards are whether or not the licensee was successful at hearing in getting the charges reduced or outright dismissed; the licensee's good faith belief in the merits of his position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

19. In this case, respondent provided evidence that formed a basis for determining that outright revocation of all licenses was unnecessary, that instead a suspension with extension of probation should be imposed. In consideration of these

factors, it is determined that it is appropriate to reduce the bureau's cost recovery to \$7,500.

ORDER

1. Automotive Repair Dealer Registration No. ARD 283712 issued to ECMB Services, Inc., doing business as 1st Stop Car Care & Smog, Miguel Beltran, President is suspended for 90 days from the effective date of this decision and order. The probation previously imposed upon this registration is revoked and reinstated with the additional terms and conditions that the probation period will be extended to October 11, 2027, for a total of five years.

2. Smog Check Station License No. RC 283712 issued to ECMB Services, Inc., doing business as 1st Stop Car Care & Smog, Miguel Beltran, President is suspended for 90 days from the effective date of this decision and order. The probation previously imposed upon this license is revoked and reinstated with the additional terms and conditions that the probation period will be extended to October 11, 2027, for a total of five years.

3. Brake Station License No. BS 283712 issued to ECMB Services, Inc., doing business as 1st Stop Car Care & Smog, Miguel Beltran, President is suspended for 90 days from the effective date of this decision and order. The probation previously imposed upon this license is revoked and reinstated with the additional terms and conditions that the probation period will be extended to October 11, 2027, for a total of five years.

4. Lamp Station License No. LS 283712 issued to ECMB Services, Inc., doing business as 1st Stop Car Care & Smog, Miguel Beltran, President is suspended for 90

days from the effective date of this decision and order. The probation previously imposed upon this license is revoked and reinstated with the additional terms and conditions that the probation period will be extended to October 11, 2027, for a total of five years.

5. In addition to the investigation and enforcement costs ordered in the stipulated settlement and disciplinary order for probation, effective October 12, 2022, ECMB Services, Inc., doing business as 1st Stop Car Care & Smog, Miguel Beltran, President, shall pay the bureau additional investigation and enforcement costs of \$7,500.

DATE: August 5, 2024



TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings