

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

In the Matter of the Accusation Against:

BRADLEY JOHN STEWART dba JONES AUTOMOTIVE REPAIR

2952 B. Street

Rosamond, CA 93560

Automotive Repair Dealer Registration No. ARD 291440

Smog Check Station License No. RC 291440

and

GEORGE ALLEN LETOSKY

P.O. BOX 804

Rosamond, CA 93560

Smog Check Inspector License No. EO 640116

Respondents.

Case No. 79/21-1491

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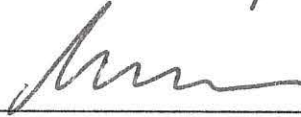
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DECISION

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 March 23, 2023.

IT IS SO ORDERED this 8 day of February, 2023.



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

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

In the Matter of the Accusation Against:

**BRADLEY JOHN STEWART doing business as JONES
AUTOMOTIVE REPAIR**

and

GEORGE ALLEN LETOWSKY

Respondents.

Agency Case No. 79/21-1491

OAH No. 2022020159

PROPOSED DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 26 and November 30, 2022.

Complainant, Patrick Dorais, Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), was represented by Vinodhini Ramagopal, Deputy Attorney General. Respondent, Bradley John Stewart, doing

business as Jones Automotive Repair, was represented by William D. Ferreira. Default proceedings against George Allen Letowsky took place before the hearing.

This matter is governed under the Business and Professions Code and the Motor Vehicle Inspection Program, codified in Health and Safety Code sections 44000 through 44127, and by implementing regulations. Each regulation cited below is a section of title 16 of the California Code of Regulations.

Testimony and documents were received in evidence. The record was held open until December 23, 2021, for the parties to submit written closing arguments. Complainant timely submitted Complainant's Closing Brief, which was marked for identification as Exhibit 20. Respondent had submitted before the hearing a Trial Brief; Partial Closing Argument, Exhibit F.

On page B20 of Exhibit F respondent objects "to the admission or use of [complainant's] said evidence beyond Administrative Hearsay under *Lake v. Reed* [(1997) 16 Cal.4th 448] where said evidence cannot be used to make findings in this matter, but can only be used to support or explain other relevant admissible evidence required to make the appropriate findings to sustain the causes for discipline in the Accusation." The objection is overruled for the reasons explained in the Analysis below.

The record closed and the matter submitted for decision on December 23, 2022.

STATEMENT OF THE CASE

In January 2021 the Bureau examined respondent's smog check results over a one-year period. The Bureau contends the results show fraud or misrepresentation because, statistically, they are all but impossible. Respondent contends that reliance on

statistical evidence deprives him of due process of law and in any event fails to prove wrongdoing of any kind.

FINDINGS OF FACT

1. Complainant brought the Accusation in his official capacity and caused it to be served on November 22, 2021. Respondent timely sought a hearing by submitting his Notice of Defense on December 8, 2021.

2. On June 22, 2021, the Bureau issued respondent Automotive Repair Dealer registration number ARD 291440. The registration is scheduled to expire on June 30, 2023.

3. On August 2, 2018, the Bureau issued respondent Smog Check station license number RC 291440. The license is scheduled to expire on June 30, 2023.

4. Respondent's smog check station has held Star Station certification since April 8, 2019. The certification remains active unless respondent's registration or license is revoked, cancelled, becomes delinquent, or certification is suspended.

Citation

5. On May 8, 2019, the Bureau issued respondent citation number C2019-1107 for violating Health and Safety Code section 44012. On April 23, 2019, the Bureau had sent respondent an undercover vehicle for a smog check. Equipment required for compliance with anti-smog laws and regulations, the Evaporative Emissions System (EVAP) was missing or modified. Nonetheless respondent and the licensed technician he employed, George Letowsky, certified the vehicle compliant. The Bureau issued Mr. Letowsky citation number M2019-1108. For educational purposes, respondent

participated in a Citation Service Conference. On July 12, 2019, respondent paid \$1,000, the citation's penalty.

6. The Bureau's mission is to protect the public from the harm caused by vehicles' emissions. Gasoline stored in a vehicle emits harmful gases as it evaporates. If properly sealed, storage components, the fuel tank, cap, and hoses, minimize emissions. The Bureau requires a test that injects nitrogen gas, N₂, into the components, which will fail a smog check if excessive leaks under pressure are detected.

7. In a January 2012 Specification, Exhibit 5, the Bureau published detailed performance requirements for this test, the Low Pressure Fuel Evaporative Test or LPFET. Part of a smog check, the test must be performed, with few exceptions, on all vehicles in the model years 1976 through 1995 if the Bureau's 2017 Smog Check Manual mandates use of BAR-97 testing during a smog check. The test measures headspace, the volume of the gases above the liquid gasoline stored in the fuel tank. LPFET results, like other results of a smog check, are automatically transmitted to the Vehicle Inspection Database (the VID).

8. Required LPFET equipment includes a vent line attached to a canister of a standard size, the calibration tank or caltank, holding the N₂ for injection. Instead of plugging the vent line into the vehicle's storage components, a technician may plug it into the caltank or a canister that has the same volume as the caltank. Instead of measuring headspace, a technician thus substitutes the caltank's or other canister's volume.

9. A test performed in this way, called clean tanking, yields, and the VID records, a result in the caltank range, consistently between 1.5 and 2.5 gallons. On

completing such a smog check, the technician is able to issue a false certificate of compliance with anti-smog laws and regulations.

10. Results from measuring headspace vary based on differences between one vehicle and another, such as the volume of gasoline in a fuel tank. The results of thousands of smog checks in the VID enable a statistician to predict with near certainty the normal characteristics of a sufficiently large set of properly performed smog checks. Claimant's expert, Francis J. Di Genova, is such a statistician, whose hearing testimony accorded with his affidavit, Exhibit 12.

11. Mr. Di Genova qualifies as an expert in using statistics to analyze data from the VID as he holds advanced degrees in Physics and Environmental Science. After graduate studies in Probability and Statistics, Statistical Quality Control, Design of Experiments, and Regression Analysis, for 45 years he has developed expertise working for private clients such as Sun Electric and General Motors and with several government agencies nationwide concerned with air quality. An Air Quality Engineer II, Mr. Di Genova leads the Bureau in fraud analysis and enforcement requiring engineering support.

12. The graph in Exhibit 10 shows results of headspace testing reported to the VID in the subject period, the year ending January 7, 2021. Of 435,176 LPFET's completed by 4,371 smog check stations statewide, results in the range 0 to 1.4 gallons were from 0.36 percent of tests, results in the range 1.5 to 2.5 gallons, the caltank range, were from 13.52 percent of tests, and results in the range 2.6 to 3.0 gallons were from 2.39 percent of tests. Tests yielding higher headspace ranges are grouped in one-gallon increments. Each group of tests in the range 3.1 to 4.0 gallons, 4.1 to 5.0 gallons, and so on up to the range of 40.1 gallons or more, are nearly evenly

distributed, each range accounting for less than five percent of all LPFET headspace measurements.

13. Exhibit 10 thus shows that if LPFET's are not illegally performed, headspaces they report to the VID are randomly and nearly evenly distributed. The exception is the percentage of the tests reporting headspace in the caltank range. The percentage of tests whose results are in the caltank range skews significantly higher than tests with results in another range. Mr. Di Genova attributes the skewing to clean tanking.

14. Of 134 LPFET's performed at respondent's smog check station in the subject period, 96.27 percent, or 129, had headspace results in the caltank range. Exhibit 10 shows how far the concentration of respondent's headspace results in the caltank range exceeds results statewide.

Investigation

15. On January 7, 2021, Program Representative I Albert Copeland, Enforcement Division, Bakersfield Field Office, examined respondent's LPFET's in the subject period. Based on the statistical anomalies described above, he concluded that by clean tanking 110 vehicles in the period, respondent violated the statutes and regulations cited below.

16. In the subject period, 1.7 percent, 73 of the 4,371 stations, reported headspace in the caltank range, while LPFET's from 53.1 percent, 2,323 of the 4,371 stations statewide, reported no headspace in the caltank range. In a few areas of the state, the odds are 10 or more times higher than in other areas that an LPFET will report headspace in the caltank range. Based on these facts, Mr. Di Genova concluded

that results of the LPFET's from a few smog check stations, such as respondent's, have grossly inflated the percentage of LPFET's with results in the caltank range.

17. If respondent's headspace results in the caltank range approximated statewide results, about 18, 13.52 percent of 134 LPFET's, would be in that range. Mr. Di Genova applied the binomial probability distribution, a function that accounts for the base likelihood of an event, to find that there is a chance of about one in one hundred that 27 of respondent's 134 LPFET's would be in the caltank range, a chance of less than one in a million that 39 tests would be in that range, a chance of less than one in a billion that 45 tests would be in that range, and a chance of less than one in a trillion that 51 tests would be in that range.

Rehabilitation

18. Respondent has worked at his facility since 2011. He revered the previous owner as a father figure. Realizing his dream, respondent has been owner since 2018. Respondent performs all sorts of automotive repairs and maintenance, including oil changes, alignments, and work on clutches and engines.

19. Until January 2021, respondent's employee, Mr. Letowsky, was in charge of smog checks. Hired by the previous owner in approximately 2016, Mr. Letowsky had no managerial duties. He would assist with other work if not performing smog checks. To respondent Mr. Letowsky seemed a skilled and respectful employee who did his job well. Respondent regularly checked Mr. Letowsky's scores assigned by the Bureau online.

20. Respondent knew nothing of clean tanking until he read the Bureau's allegations in the Accusation. The next day respondent informed Mr. Letowsky he could not employ him until matters were resolved with the Bureau.

21. Respondent himself became licensed as a smog technician in June 2021. He had always wished to know every aspect of his business. He was able to study for the license with extra time available to him during the COVID-19 pandemic.

22. Respondent is determined to help customers, by working however always within the law. He takes pride in his facility's Star certification, the only shop in Rosamond, California, so certified. Respondent appreciates the opportunity to repair vehicles the Bureau directs there and the customers who, without assistance from the state, lack funds for repairs.

23. Respondent believes he has no incentive to clean tank or otherwise avoid measures to control vehicles' emissions. The incentive is rather to follow the law, as the facility realizes income not only from smog checks but also from repairing vehicles that fail smog checks.

24. To help prevent clean tanking by a new employee, respondent devised a physical obstacle to delay wrongdoing, a cap on the caltank that cannot be removed except with a tool such as a wrench. He installed cameras so that, during the short delay the obstacle provides, he could monitor and forestall any attempt to plug the vent line into the caltank or another canister preliminary to clean tanking.

25. To help prevent illegality relating to LPFET's, respondent, assisted by counsel, summarized the facility's policies and procedures, with space for an employee's signature and respondent's counter-signature. The document, Exhibit A, page B1, states: "No unauthorized bypasses of any kind are permitted, including use of the calibration tank in lieu of performing the test."

26. To help prevent any illegality relating to smog checks, the document, Exhibit A, page B1, includes this warning: "Should any Smog Inspection Technician fail

to comply with the procedures outlined herein and perform any illegal smog inspections, a complaint will be filed with the Bureau of Automotive Repairs (BAR), and a police report will be immediately filed with the Police Department to deter such conduct." The smog technician respondent currently employs signed the document on September 20, 2022.

LEGAL CONCLUSIONS

1. The Bureau carried its burden of proof. The standard the Bureau met is proof by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

Principles of Law

2. The director of the Department is authorized under Business and Professions Code section 9884.7 to impose discipline on an ARD registration based on:

Under subdivision (a)(4), "any . . . conduct that constitutes fraud."

Under subdivision (a)(6), "failure in any material respect to comply with the provisions of this chapter [20.3 of Division 3 of the Business and Professions Code, sections 9880 through 9889.68 (the Automotive Repair Act)] or regulations adopted pursuant to it."

Under subdivision (c), "a course of repeated and willful violations of [the Automotive Repair Act] or regulations adopted pursuant to it." In such a case, the director may discipline the registration of any business operated by an ARD.

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3. Health and Safety Code section 44072.2, subdivision (a), states that license discipline is appropriate for various statutory violations, including:

Under Health and Safety Code section 44012, if a smog test is not performed in accordance with procedures prescribed by the Department.

Under Health and Safety Code section 44015, subdivision (b), if a certificate of compliance is issued to a vehicle that does not meet the testing requirements of Health and Safety Code section 44012.

4. Health and Safety Code section 44072.2, subdivision (c), states that license discipline is appropriate if a licensee "violates any of the regulations adopted by the director pursuant to this chapter [5 of Part 5 of Division 26 of the Health and Safety Code, sections 44000 through 44127 (the Motor Vehicle Inspection Program)]. Regulations pertinent here that implement the Motor Vehicle Inspection Program include:

Regulation 3340.24, subdivision (c), authorizing license discipline "if the licensee falsely or fraudulently issues . . . a certificate of compliance"

Regulation 3340.30, subdivision (a), requiring a licensee to "[i]nspect, test and repair vehicles, as applicable, 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 [5.5 of Chapter 1 of Division 33 of Title 16 of the Regulations]."

Regulation 3340.35, subdivision (c), requiring that a licensee issue a "certificate of compliance . . . 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."

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Regulation 3340.41, subdivision (c), mandating that: "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 Nor shall any person enter into the EIS . . . any false information about the vehicle being tested." EIS is defined in Regulation 3340.1:

"BAR-97 Emissions Inspection System" or "EIS" means tamper-resistant test equipment meeting the requirements of subsection (a) of section 3340.17 of the California Code of Regulations and is certified by the Bureau for use in the Smog Check Program. The EIS collects and measures emissions data, and where applicable On-Board Diagnostics (OBD) data, then transmits inspection results to the [VID].

Regulation 3340.42, subdivision (b)(2), requiring: "A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation."

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

6. Health and Safety Code section 44072.8, similarly to Business and Professions Code section 9884.7, subdivision (c), provides that if license discipline is imposed following an administrative hearing "any additional license issued . . . in the name of the licensee may be likewise revoked or suspended by the director."

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Analysis

7. No eyewitness testified to wrongdoing by respondent. The Bureau conducted no surveillance or on-site inspection to confirm wrongdoing. Evidence of wrongdoing is nevertheless compelling.

8. If a vehicle were to take less than two hours to travel a 100-mile stretch of highway with a posted speed limit of 50 miles per hour, a speeding citation would be warranted, even if no one saw the driver speeding on any part of the highway. Wrongdoing in such a case is established by fact- and number-based analysis alone, not unlike that described by Mr. Di Genova.

9. Statistics can be manipulated to make matters seem plausible, even certain, that are not so. An example respondent offers in Exhibit F, page B13, is Hospital X, where patients die at a rate higher than at other hospitals. Granted, as respondent argues, it is unfair to conclude Hospital X is killing patients. But a numerical analysis is not necessarily meaningless or misguided in such a case. A person could fairly rely on the rate to avoid Hospital X, inferring that its higher death rate may translate to a real-world risk for each patient.

10. In this matter, no evidence showed that the Bureau unfairly manipulated facts. Instead of demonstrating that complainant manipulated or unfairly presented facts, respondent argues that a statistics-based method is unsound, or rather insufficient as proof.

11. Mr. Di Genova's method does leave some doubt. There is doubt and insufficient proof that respondent clean tanked 110 vehicles in the subject period. The number may be higher or lower. There is at least some theoretical doubt that

respondent experienced the one chance in more than a trillion that 129 of 134 LPFET's at his smog station happened to fall in the caltank range.

12. Such theoretically possible doubt is not the same as failure of proof. Theoretical doubt is not necessarily significant. A trier of fact may hear that a witness has no direct evidence. The witness did not see vehicles collide. The witness heard the sound of breaking glass and twisting metal, came upon a victim lying in wreckage, and heard one of the drivers blurt an apology for being inattentive. Such evidence may leave room for doubt, but may also with reason be believed as evidence of one driver's fault. It is normal, though evidence may be doubtful in some ways, for a trier of fact to rely on it to resolve doubt.

13. Inverting respondent's argument shows in a different way how the public is endangered if a statistical analysis of the VID is not trusted to uncover falsehood. Thousands of smog check stations operate in California. Monitoring all of them without statistical queries of data in the VID would be time-consuming, impractical, and mostly unworkable.

Cause for License Discipline

14. Cause exists for discipline of respondent's licensure, both ARD registration and Smog Check station license, under Business and Professions Code section 9884.7, subdivision (a)(4). As alleged in the First Cause for Discipline, respondent's clean tanking constitutes fraud. Respondent falsely certified compliant with anti-pollution laws and regulations several vehicles that did not undergo LPFET's and thus were not properly tested for leaks from the fuel storage system.

15. Cause exists for discipline of respondent's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6). As alleged in the

Second Cause for Discipline, by clean tanking respondent failed in a material respect to comply with the Automotive Repair Act or its implementing regulations. Several vehicles were certified compliant with anti-pollution laws and regulations though instead of an LPFET, respondent used the headspace of a canister, not the vehicle's fuel tank and fuel storage components.

16. Cause exists for discipline of respondent's licensure under Health and Safety Code section 44072.2, subdivision (a). As alleged in the Third Cause for Discipline, respondent is responsible for various statutory violations. In violation of Health and Safety Code section 44012, respondent did not perform an LPFET for each of several vehicles and thus did not perform smog checks in accordance with procedures prescribed by the Department, including procedures set out in the Specification, Exhibit 5, and the 2017 Smog Check Manual. In violation of Health and Safety Code section 44015, subdivision (b), certificates of compliance were issued to several vehicles though they were not subjected to the testing requirements of Health and Safety Code section 44012.

17. Cause exists for discipline of respondent's licensure under Health and Safety Code section 44072.2, subdivision (c). As alleged in the Fourth Cause for Discipline, respondent violated:

Regulation 3340.24, subdivision (c), by falsely or fraudulently issuing certificates of compliance unsupported by results of a legitimately performed LPFET.

Regulation 3340.30, subdivision (a), by failing to perform LPFET's on several vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and Regulation 3340.42.

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Regulation 3340.35, subdivision (c), by issuing certificates of compliance to vehicle owners or operators that were not inspected in accordance with the procedures for the LPFET specified in Regulation 3340.42.

Regulation 3340.41, subdivision (c), by entering in an emission control system, the EIS, false information about a vehicle being tested, specifically headspace in a caltank or equivalent canister, rather than the vehicle's headspace.

Regulation 3340.42, subdivision (b)(2), by not performing a functional inspection of emission control systems on vehicles as specified in the 2017 Smog Check Manual, and instead falsifying a vehicle's headspace by measuring a caltank or equivalent canister during a purported LPFET.

18. Cause exists for discipline of respondent's licensure under Health and Safety Code section 44072.2, subdivision (d). As alleged in the Fifth Cause for Discipline, by means of clean tanking, respondent committed acts involving dishonesty, fraud, or deceit, injuring consumers by injuring the ability of the state to control harmful emissions from vehicles.

19. Cause exists under Business and Professions Code section 9884.7, subdivision (c), to discipline the registration held by any Bureau-registered business in California in respondent's name. As the Accusation, paragraph 38, states with respect to Other Matters, discipline of any such registration is appropriate to the extent there is discipline of respondent's registration in this matter.

20. Cause exists under Health and Safety Code section 44072.8, to discipline the Smog Check station license held by any Bureau-licensed business in California in respondent's name. As the Accusation, paragraph 39, states with respect to Other

Matters, discipline of such another license is appropriate to the extent there is discipline of respondent's license in this matter.

Rehabilitation

21. Respondent did not directly participate in wrongdoing. Still, respondent shares blame for employees' wrongful conduct, including an intentional act like clean tanking.

22. Vicarious liability for wrongdoing in the course of a technician's work is imposed, as the court held in *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 621, under the doctrine of respondeat superior. Liability imposed under the doctrine extends to malicious acts and other intentional torts of an employee or agent, so long as the employee or agent, like Mr. Letowsky, committed the acts while acting within the scope of employment.

23. As the court observed in *Grigsby v. Hagler* (1938) 25 Cal.App.2d 714, 716, a principal's vicarious liability obtains even for fraud by an employee or agent, even though the employer, respondent in this case, is unaware of the wrongdoing. The rationale for such a conclusion was articulated by the court in *Mantzoros v. State Board of Equalization* (1948) 87 Cal.App.2d 140, 144-145:

The licensee, if he elects to operate his business through employees must be responsible to the licensing authority for their conduct in the exercise of his license; else we would have the absurd result that [employees' conduct is] . . . forbidden [but] the licensees would be immune to disciplinary action

24. Respondent's responsibility for harm extends only as far as the legal doctrine explained above. Respondent immediately accepted his responsibility and moved effectively to prevent any repetition of wrongdoing. Thus respondent no longer employs Mr. Letowsky. There was no evidence that after respondent learned of the Accusation's allegations, any more clean tanking or other impropriety occurred during smog checks.

25. The preventive steps respondent has taken may not be completely fail-safe, but respondent devoted thought, effort, and resources to ensure that all work at his facility, and not just LPFET's, follows all requirements of the law and the Bureau's specifications.

26. Respondent's citation in 2019 supports license discipline, but not to a great extent. The conduct cited originated with Mr. Letowsky. Respondent participated in a conference with Bureau personnel, availing himself of the opportunity to learn to avoid misconduct. He duly paid the penalty. The cited conduct is now well in the past, occurring not long after respondent became a business owner. In this context, and with respondent's preventive steps prompted by the Accusation in this matter, there is reason to expect respondent will avoid conduct subject to citation and any misconduct in the future.

27. Respondent articulated, well and convincingly, his determination to continue to help customers and the less advantaged in his community, as well as to support the Bureau's mission to control emissions. He has acted to make his efforts more effective than in the past and less likely to transgress laws or regulations. Respondent is rehabilitated to an extent that makes license probation appropriate, rather than outright revocation.

28. The Bureau's Guidelines for Disciplinary Orders and Terms of Probation (Rev. March 2016) recommend five years of probation for misconduct that includes fraud or violation of Business and Professions Code section 9887.4, subdivision (a)(4). As explained above, however, respondent's culpability is vicarious, and he has taken significant action to avoid any vicarious and any intentional misconduct in the future. A two-year probation, as recommended in cases of violation of Business and Professions Code section 9887.4, subdivision (a)(6), is more appropriate in these circumstances.

Costs

29. Complainant incurred \$13,876.58 in costs: \$6,957.83 for investigation and \$6,918.75 for enforcement.

30. Respondent argued he demonstrated a colorable case for not imposing discipline, so that costs should be either not awarded or reduced under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In this regard, respondent mainly sought to show that Mr. Di Genova's statistical method is not to be trusted. Respondent also sought to show that he should not be held liable for conduct by his former employee in the subject period. Neither showing was convincing.

31. Nevertheless a cost award should be adjusted significantly downward. It does not appear entirely reasonable that complainant's case should have cost as much as claimed. There was no evidence of interviews, or surveillance at respondent's premises, or examination of respondent's invoices or work documentation. The case against respondent was based almost entirely on analysis of the VID. Mr. Di Genova's expert credentials are far reaching, but he is a Bureau employee, not entitled to the fees an outside expert might charge. Taken all together, these considerations suggest

that a cost award to the Bureau should be \$7,500, somewhat more than half of its request.

ORDER

IT IS HEREBY ORDERED that the registration as an Automotive Repair Dealer, ARD 291440, and the Smog Check Station license, RC 291440, held by respondent Bradley John Stewart doing business as Jones Automotive Repair, are immediately revoked. However, each revocation is stayed and the registration and license are placed on probation for two years under the following terms and conditions.

1. 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 respondent.

2. Quarterly Reporting

During the period of probation, respondent shall report either by personal appearance or in writing as determined by the Bureau on a schedule set by the Bureau, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests

Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation,

report any financial interest which any respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records

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

5. Tolling of Probation

If, during probation, respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. Violation of Probation

If respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondent is served notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau, including any period during which suspension or probation is tolled. If respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by respondent within 30 days of that date. If respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

8. Cost Recovery

Respondent shall pay the Bureau of Automotive Repair \$7,500 for the reasonable costs of the investigation and enforcement of case no. 97/21-1491. Respondent shall make such payment within 60 days of the date that this Decision becomes effective or on such terms, such as a payment schedule, to which the Bureau may agree. Any agreement for a scheduled payment plan shall require full payment to

be completed no later than six months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case no. 97/21-1491. 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.

9. Completion of Probation

Upon successful completion of probation, respondent's affected registration or license or both will be fully restored or issued without restriction, if respondent meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

10. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be vacated. Such request shall be made in writing to the Bureau. The Director and the Chief of the Bureau reserve the right to evaluate 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.

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Respondent may not petition the Director for reinstatement of the surrendered registration or license or both nor apply for a new registration or license under the jurisdiction of the Bureau at any time before the date of the originally scheduled completion of probation. If respondent applies to the Bureau for a registration or license at any time after that date, respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to the Bureau and left outstanding at the time of surrender.

DATE: 01/23/2023

Thomas Lucero

THOMAS LUCERO

Administrative Law Judge

Office of Administrative Hearings