

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

In the Matter of the Statement of Issues Against:

ENRIQUE RAMIREZ dba KIKE'S AUTO REPAIR

15 Davis Ave.

Freedom, CA 95019

Automotive Repair Dealer Registration No. ARD 293167,

Smog Check Station License Applicant.

ENRIQUE RAMIREZ-ORTIZ,

Smog Check Inspector License Applicant

Smog Check Repair Technician License Applicant,

Respondents.

Case No. 79/19-3838


///

OAH No. 2019090960

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 February 21, 2020.

DATED: Dec. 30, 2019 

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 Statement of Issues Against:

**ENRIQUE RAMIREZ, doing business as Kiké's Auto Repair,
Automotive Repair Dealer Registration No. ARD 293167**

ENRIQUE RAMIREZ-ORTIZ,

Respondent.

Agency Case No. 79/19-3838

OAH No. 2019090960

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of
Administrative Hearings, heard this matter on October 17, 2019, in Oakland, California.

Deputy Attorney General Gregory Tuss represented complainant Patrick Dorais,
Chief of the Bureau of Automotive Repair.

Attorney William Ferreira represented respondent Enrique Ramirez, also known
as Enrique Ramirez-Ortiz, who was present for the hearing.

The matter was submitted for decision on October 17, 2019.

FACTUAL FINDINGS

1. In January 2019, the Bureau of Automotive Repair registered respondent Enrique Ramirez (also known as Enrique Ramirez-Ortiz) as an Automotive Repair Dealer (Registration No. 293167), doing business using the name Kiké's Auto Repair.

2. After receiving Automotive Repair Dealer registration for Kiké's Auto Repair, respondent applied to license his business as a Smog Check Station. He also applied for personal licenses to act as a Smog Check Inspector and as a Smog Check Repair Technician. The Bureau denied these applications, and respondent requested a hearing.

3. Acting in his official capacity as Chief of the Bureau, complainant Patrick Dorais filed a statement of issues in this matter in August 2019. As the basis for denying the applications described in Finding 2, complainant alleges that respondent formerly held smog check licenses that the Bureau revoked because of fraud.

Prior Smog Check License Revocation

4. Respondent formerly held Automotive Repair Dealer Registration No. ARD 269482 for a business he called Aztlan Auto Repair. He also held Smog Check Station License No. RC 269482, Brake Station License No. BS 269482, and Lamp Station License No. LS 269482, all for the same business.

5. Respondent also held Smog Check Inspector License No. EO 151159 and Smog Check Repair Technician License No. EI 151159; Brake Adjuster License No. BA 151159; and Lamp Adjuster License No. LA 151159.

6. Respondent employed one other smog check inspector at Aztlan Auto Repair, Salvador Mendoza Arteaga (Smog Check Inspector License No. EO 637624).

7. Effective December 19, 2016, the Director of the Department of Consumer Affairs revoked all the licenses and registrations described in Findings 4, 5, and 6.

8. The Director revoked the licenses as stated in Finding 7 because between July and December 2015, Arteaga had caused Aztlan Auto Repair to issue certificates of compliance for 14 vehicles that no licensed smog inspector actually had inspected.

9. The Director found that Arteaga had acted knowingly and deliberately in causing Aztlan Auto Repair to issue fraudulent certificates of compliance. The Director did not find that respondent had known about or cooperated in Arteaga's fraud, but revoked respondent's registration and licenses because he had failed in his responsibility to prevent fraud by supervising licensed activities at his business.

10. Respondent did not participate in the hearing that led the Director to revoke his former licenses and registration.

Additional Evidence

11. Because of family obligations, respondent neglected his business during 2015. He frequently was absent from the site when the business was open, and delegated day-to-day responsibilities to his brother-in-law and to Arteaga.

12. Respondent testified that he did not know that Arteaga had performed fraudulent smog inspections until he received notice from the Bureau in mid-2016 that it intended to take disciplinary action against him and Arteaga. He said further that he

would not have permitted Arteaga to continue committing these frauds if he had learned about them earlier. This testimony is credible.

13. Respondent has worked in the automotive repair industry for about 15 years. He has not been the subject of any disciplinary action aside from the disciplinary action described above in Findings 7 through 10.

14. Before revoking respondent's former licenses, the Director suspended them in mid-2016. Respondent did home improvements, and worked as an assistant automobile mechanic in a friend's business.

15. Respondent decided in 2018 to try again operating his own automotive service business. At Kiké's Auto Repair, respondent currently is the only mechanic. He always is personally present when Kiké's Auto Repair is open for business. Respondent's wife handles reception and customer service, but respondent's brother-in-law is not involved in the business.

16. If respondent receives the licenses he seeks, he intends to be the only smog check inspector and repair technician at his business. If business is successful enough, he would consider hiring an assistant mechanic to do simple services such as oil changes and minor tune-ups, freeing him to spend more time on smog inspection and repair service.

17. Respondent presented reference letters from several automotive service industry colleagues describing respondent's reputation for honest customer service. One of these authors (Silvia Mora) does not know about the Bureau's disciplinary action involving Aztlán Auto Repair. The others (Alfredo Calderon, Victor Rodriguez, Rafael Uribe, and Macario Contreras) do, and mentioned specifically respondent's commitment to following the law in his new business.

18. Respondent also presented reference letters from family members, friends, and his pastor, attesting to his integrity.

LEGAL CONCLUSIONS

1. The Bureau may refuse to issue a Smog Check Station license, a Smog Check Inspector license, or a Smog Check Technician license to any person who has committed dishonesty or fraud. (Health & Saf. Code, §§ 44072, 44072.1, subd. (d).) The matters stated in Findings 4 through 9 constitute cause for the Bureau to deny respondent's applications.

2. The Bureau also may refuse to issue any smog check license to a person who formerly held a similar license that the Bureau revoked. (Health & Saf. Code, §§ 44072, 44072.1, subd. (b).) The matters stated in Findings 4 through 9 constitute cause for the Bureau to deny respondent's applications.

3. The Bureau also may revoke a smog check license for violating any law governing the smog check program, or may impose probationary terms on a license. (Health & Saf. Code, §§ 44072.2, 44072.4.) The matters stated in Findings 9 through 18 demonstrate that the Bureau may protect the public against the risk of fraud or dishonesty in the smog check program by issuing probationary licenses to respondent. A lengthy period of probation during which respondent must personally perform any smog check inspections at Kiké's Auto Repair will permit the Bureau to ensure that respondent understands and is capable of complying with all smog check program laws and regulations.

ORDER

1. The application by respondent Enrique Ramirez for a Smog Check Station license for Kiké's Auto Repair is granted. The license will be issued and immediately revoked. Revocation is stayed for five years, however, on the probationary terms and conditions stated below.

2. The application by respondent Enrique Ramirez-Ortiz for a Smog Check Inspector license is granted. The license will be issued and immediately revoked. Revocation is stayed for five years, however, on the probationary terms and conditions stated below.

3. The application by respondent Enrique Ramirez-Ortiz for a Smog Check Repair Technician license is granted. The license will be issued and immediately revoked. Revocation is stayed for five years, however, on the probationary terms and conditions stated below.

4. The following terms and conditions govern respondent's smog check licenses during the five-year probation period.

A. 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.

B. 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.

C. 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.

D. Access to Examine Vehicles and Records

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

E. 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 training requirements and the requirement to 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.

F. Violation of Probation

If respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director of the Department of Consumer Affairs, 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.

G. Maintain Valid License

Respondent shall, at all times while on probation, maintain current and active registrations and licenses with the Bureau, including during any period during which suspension or probation is tolled. If any of respondent's registrations or licenses is expired at the time the decision becomes effective, that registration or license must be renewed by respondent within 30 days of that date. If any of respondent's registrations or licenses expires during a term of probation, by operation of law or otherwise, then upon renewal the 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 license during the period of probation shall also constitute a violation of probation.

H. Completion of Probation

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

I. 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 Bureau Chief 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.

Respondent may not petition the Director for reinstatement of the surrendered license, or apply for a new registration or license under the jurisdiction of the Bureau at any time before the date of the originally scheduled completion of probation. If 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.

J. Training Course

During the period of probation, respondent shall attend and successfully complete a Bureau-specified and -approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received. In the Bureau's sole discretion, the Bureau may accept proof of a course completed during the year preceding the effective date of this decision in satisfaction of this requirement.

K. Notification to Employer

If respondent performs services falling within the scope of his Smog Check Inspector or Smog Check Repair Technician licenses at any licensed Smog Check Station other than Kiké's Auto Repair, respondent shall provide each of his current or future employers a copy of this decision and the underlying statement of issues before commencing employment. Respondent shall submit to the Bureau, upon request, satisfactory evidence of compliance with this term of probation.

L. Supervision Requirements

Respondent shall not delegate his supervisory duties, as they relate to the business activities he conducts in reliance on the probationary Smog Check Station license, to another person during the period of probation. Respondent shall perform

all smog check activities at Kiké's Auto Repair personally, and shall not employ any other Smog Check Inspector or Smog Check Repair Technician to carry out smog check activities.

DATE: October 30, 2019

DocuSigned by:
Juliet E. Cox
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JULIET E. COX

Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

Case No. 79/19-3838

STATEMENT OF ISSUES

13 **ENRIQUE RAMIREZ**
14 **Dbá Kike's Auto Repair**
15 **15 Davis Ave.**
Freedom, CA 95019

16 **Automotive Repair Dealer Registration No.**
ARD 293167,

17 **ENRIQUE RAMIREZ-ORTIZ**
18 **71 Werner Rd.**
Royal Oaks, CA 95076,

19 Respondents.

20
21
22 **PARTIES**

23 1. Patrick Dorais (Complainant) brings this statement of issues solely in his official
24 capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer
25 Affairs.

26 2. On January 22, 2019, the Bureau issued Automotive Repair Dealer Registration
27 No. ARD 293167 to Respondent Enrique Ramirez dba Kike's Auto Repair. This automotive
28 repair dealer registration was in full force and effect at all times relevant to the charges brought in

1 this statement of issues and will expire on January 31, 2020, unless renewed.

2 3. On March 5, 2019, the Bureau received an application from Respondent Enrique
3 Ramirez dba Kike's Auto Repair for a smog check station license. On or about January 25, 2019,
4 Respondent Enrique Ramirez dba Kike's Auto Repair certified under penalty of perjury to the
5 truth of all statements in the application. The Bureau denied Respondent Enrique Ramirez dba
6 Kike's Auto Repair's application on April 4, 2019.

7 4. On May 2, 2019, the Bureau received an application from Respondent Enrique
8 Ramirez-Ortiz¹ for a smog check repair technician license and a smog check inspector license.
9 On or about April 15, 2019, Respondent Enrique Ramirez-Ortiz certified under penalty of perjury
10 to the truth of all statements in the application. The Bureau denied Respondent Enrique Ramirez-
11 Ortiz's application on May 23, 2019.

12 JURISDICTION

13 5. This statement of issues is brought before the Director of the Department of
14 Consumer Affairs (Director) for the Bureau under the authority of the following laws. All section
15 references are to the Business and Professions Code unless otherwise indicated.

16 6. Health and Safety Code section 44002 provides:

17 "The department shall have the sole and exclusive authority within the state for
18 developing and implementing the motor vehicle inspection program in accordance with this
19 chapter.

20 "For the purposes of administration and enforcement of this chapter, the department, and
21 the director and officers and employees thereof, shall have all the powers and authority granted
22 under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475)
23 and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions
24 Code and under Chapter 33 (commencing with Section 3300) of Title 16 of the California Code
25 of Regulations. Inspections and repairs performed pursuant to this chapter, in addition to meeting
26 the specific requirements imposed by this chapter, shall also comply with all requirements

27
28 ¹ Respondent Ramirez-Ortiz is the same person as Enrique Ramirez dba Kike's
Auto Repair, Automotive Repair Dealer Registration No. ARD 293167.

1 imposed pursuant to Division 1 (commencing with Section 1) and Division 1.5 (commencing
2 with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the
3 Business and Professions Code and Chapter 33 (commencing with Section 3300) of Title 16 of
4 the California Code of Regulations.”

5 7. Health and Safety Code section 44072 states:

6 “Any license issued under this chapter and the regulations adopted pursuant to it may be
7 suspended or revoked by the director. The director may refuse to issue a license to any applicant
8 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted
9 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
10 of the Government Code, and the director shall have all the powers granted therein.”

11 STATUTORY PROVISIONS

12 8. Health and Safety Code section 44072.1 states in part:

13 “The director may deny a license if the applicant, or any partner, officer, or director
14 thereof, does any of the following:

15 ...
16 “(b) Was previously the holder of a license issued under this chapter, which license has
17 been revoked and never reissued or which license was suspended and the terms of the suspension
18 have not been fulfilled.

19 “(c) Has committed any act that, if committed by any licensee, would be grounds for the
20 suspension or revocation of a license issued pursuant to this chapter.

21 “(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is
22 injured or whereby the applicant has benefited.”

23 FACTUAL BACKGROUND AND CAUSES FOR DENIAL

24 9. The Bureau previously had issued Automotive Repair Dealer Registration No.
25 ARD 269482, Smog Check Repair Station License No. RC 269482, Brake Station License No.
26 BS 269482, and Lamp Station License No. LS269482 to Respondent Enrique Ramirez-Ortiz
27 when he was doing business as Aztlan Auto Repair. The Bureau also previously had issued Smog
28 Check Inspector License No. EO 151159, Smog Check Repair Technician License No. EI

1 151159, Brake Adjuster License number BA 151159, and Lamp Adjuster License number LA
2 151159 to Respondent Enrique Ramirez-Ortiz himself.

3 10. On July 1, 2016, the Bureau filed Accusation 79/16-122 against the licenses and
4 registration issued to Respondent Enrique Ramirez-Ortiz dba Aztlan Auto Repair alleging that a
5 smog check inspector at Aztlan Auto Repair clean plugged 14 vehicles. After a hearing, the
6 Director on December 19, 2016, revoked all of the licenses and registration issued to Respondent
7 Enrique Ramirez-Ortiz dba Aztlan Auto Repair and all the licenses issued to Respondent Enrique
8 Ramirez-Ortiz.

9 **FIRST CAUSE FOR DENIAL**

10 **(Committing an Act of Dishonesty, Fraud, or Deceit)**

11 11. Respondent Enrique Ramirez dba Kike's Auto Repair's application for a smog
12 check station license and Respondent Enrique Ramirez-Ortiz's application for a smog check
13 repair technician license and a smog check inspector license are subject to denial for committing
14 an act of dishonesty, fraud, or deceit. (Health & Saf. Code, §§ 44072.1, subd. (d).) The facts are
15 set forth in paragraphs 9-10 above.

16 **SECOND CAUSE FOR DENIAL**

17 **(Holder of Previously Revoked License)**

18 12. Respondent Enrique Ramirez dba Kike's Auto Repair's application for a smog
19 check station license and Respondent Enrique Ramirez-Ortiz's application for a smog check
20 repair technician license and a smog check inspector license are subject to denial for previously
21 being the holders of licenses that have been revoked and never reissued. (Health & Saf. Code,
22 §§ 44072.1, subd. (b).) The facts are set forth in paragraphs 9-10 above.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
25 statement of issues and that following the hearing the Director issues a decision:

26 1. Denying the application of Respondent Enrique Ramirez dba Kike's Auto Repair
27 for a smog check station license;

28 2. Denying the application of Respondent Enrique Ramirez-Ortiz for a smog check

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repair technician license and a smog check inspector license; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 8-21-19

By *Sung Baratti*
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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