

**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:

FARHAD ARBABZADEH, PARTNER; MASSOUD KHOSROZADEHE, PARTNER

dba SMOG MASTER

28 E. Birch

Fresno, CA 93650

Automotive Repair Dealer Registration No. ARD 228231

Smog Check Test Only Station License No. TC 228231

Respondents.

Case No. 79/21-6737

///

///

///

///

///

///

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 October 27, 2022.

IT IS SO ORDERED this 12 day of Sept., 2022.



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

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

**In the Matter of the Accusation and Petition to Revoke
Probation Against:**

**FARHAD ARBABZADEH, PARTNER; MASSOUD
KHOSROZADEHE, PARTNER; DBA SMOG MASTER,
Respondents**

OAH No. 2021120283

Bureau Case No. 79/21-6737

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on June 1, 2022, from Sacramento, California.

Seth A. Curtis, Deputy Attorney General (DAG), represented Patrick Dorais (complainant), Chief, Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

William D. Ferreira, Attorney at Law, represented Farhad Arbabzadeh and Massoud Khosrozadehe, doing business as Smog Master (respondents) who were present.

Evidence was received and the record was held open until July 22, 2022, for the submission of written closing arguments which were timely submitted. The record was closed, and the matter submitted for decision on July 22, 2022.

FACTUAL FINDINGS

Licensure and Jurisdiction

1. In 2003, the Bureau issued Automotive Repair Dealer (ARD) registration number ARD 228231 to Farhad Arbabzadeh and Massoud Khosrozadehe, doing business as Smog Master. The registration will expire on June 30, 2023, unless renewed or revoked.

2. On November 24, 2003, the Bureau issued Smog Check, Test Only, Station License number TC 228231 to Farhad Arbabzadeh and Massoud Khosrozadehe, doing business as Smog Master. The license will expire on June 30, 2023, unless renewed or revoked.

3. On October 14, 2021, complainant, acting in his official capacity, filed the instant accusation and petition to revoke probation against respondents. The allegations are based on a Bureau undercover operation in May 2021, during which one of respondents' employees inspected and signed a vehicle inspection report (VIR) certifying that the undercover vehicle passed a smog inspection when it could not have passed because the Bureau had removed emission control components. The

causes for discipline alleged against respondents include: (1) untrue or misleading statements; (2) fraud; (3) failure to record odometer reading; (4) statutory violations of vehicle inspection program; (5) failure to comply with regulations; and (6) dishonesty, fraud or deceit. The alleged cause to revoke probation is respondents' failure to obey all laws, as set forth in the causes for discipline. Respondents timely filed a notice of defense, and this hearing followed.

Complainant's Evidence

PRIOR DISCIPLINE AND PROBATION

4. In a disciplinary action entitled, *In the Matter of the Accusation Against Farhad Arbabzadeh and Massoud Khosrozadehe, partner, dba Smog Master, et al.*, Case No. 79/16-9952, the Bureau issued a Decision and Order effective March 27, 2019, in which respondents' ARD registration number 228231, Smog Check, Test Only, Station License number 228231, and respondent Khosrozadehe's Smog Check Inspector license number 127907 were revoked. However, the revocations were stayed and respondents' ARD registration, Smog Check, Test Only, Station license, and respondent Khosrozadehe's Smog Check Inspector license were placed on probation for a period of four years with terms and conditions including that respondents "shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondent."

5. The bases for prior discipline included that respondents and the technicians they employed (1) issued a smog check certificate after administering the wrong testing protocol regarding one automobile, and (2) issued eight smog check certificates that were false and fraudulent in that the technicians employed by respondents used clean plugging methods in which they substituted different vehicles

during the inspection and did not actually test the vehicles for which smog certificates were issued. These violations were caused by the failure of technicians employed by respondents to follow smog inspection protocols plainly set forth by the Bureau.

2021 UNDERCOVER OPERATION

6. On and between March 29 and April 5, 2021, a Bureau representative modified and documented the Bureau's 2001 Ford Focus (Ford Focus) such that it would fail the visual inspection portion of a properly performed smog inspection due to missing Positive Crankcase Ventilation (PCV) system components. On May 27, 2021, an undercover operator with the Bureau took the Ford Focus to respondents' facility and requested a smog inspection. An employee for respondents completed a written estimate for the work to be performed, specifically a smog inspection (\$59.25) and the issuance of a smog certificate (\$8.25). The odometer reading on the Ford Focus was not included in the written estimate. A licensed smog check inspector, Kevin Chow, employed by respondents, then performed the smog inspection. After the inspection was completed, Mr. Chow signed and the undercover operator received a VIR which states the Ford Focus passed the inspection, including the visual inspection. Specifically, the VIR shows that the "crankcase emission controls" passed the visual inspection. On May 27, 2021, a Bureau representative inspected the vehicle and found that it could not have passed the smog inspection because the PCV system components were missing.

TESTIMONY OF ENRIQUE LOPEZ

7. Mr. Lopez is employed by the Bureau as a Program Representative II. He has been licensed as a smog check inspector since 1986, and is familiar with smog check inspections, including visual inspections. The Ford Focus has an emissions label

under the hood that diagrams all the components that must be inspected during a smog check inspection, including the PCV valve. The computer system used in the smog check inspection prompts a smog check inspector to visually inspect emission control components. The PCV valve is included in the "crankcase emission controls" portion of the visual inspection. The Ford Focus should have failed the visual inspection because the PCV valve had been removed.

8. The PCV valve prevents crankcase fumes and vapors from escaping into the atmosphere by redirecting them into the combustion chamber. The PCV valve also releases engine pressure caused by the accumulation of fumes and vapors. Removal of the PCV valve can result in engine damage from excess pressure. It does not enhance engine performance to remove the PCV valve.

9. Mr. Lopez is one of the two Bureau representatives who met with respondents during their probation conference on June 28, 2019. A primary purpose of the probation conference is to make sure that the probationers understand what is necessary to maintain compliance. Respondents were given an opportunity to ask questions during the conference. Mr. Lopez told respondents during the probation conference that the Bureau would conduct undercover inspections during probation.

10. The probation conference summary signed by respondents on June 28, 2019, included their planned steps to maintain compliance with probation, including: (1) more thorough inspection of vehicle identification numbers (VINs); (2) scan VINs and Department of Motor Vehicles paperwork; (3) technician training as required by the probation order; and (4) verify all information entered into smog testing machines. To Mr. Lopez's understanding, items one and two above are specifically directed at preventing clean plugging, which was the primary problem in the case leading to

probation. In Mr. Lopez's view, it appeared that respondents were taking steps to ensure compliance.

TESTIMONY OF RODNEY ROSENBERGER

11. Mr. Rosenberger is employed by the Bureau in a forensic documentation lab where he prepares automobiles for undercover runs. He has been employed with the Bureau since 2018, and previously worked as a master technician in automobile dealerships.

12. The PCV valve components in a Ford Focus are normally visible from the top of the engine. Mr. Rosenberger removed the PCV valve and vacuum hose, and replaced the PCV valve with a bolt screwed into the engine valve cover where the PCV valve had been located. He did not remove a breather hose which is also one of the PCV valve components. It should be obvious on a visual inspection that the PCV valve and vacuum hose were missing.

13. Mr. Rosenberger does not recall ever seeing a PCV valve removed as a vehicle modification outside the context of a Bureau undercover operation. There is nothing to be gained in terms of vehicle performance by removing the PCV valve.

Respondents' Evidence

TESTIMONY OF KEVIN CHOW

14. Mr. Chow is a licensed smog check inspector, and has been working at respondents' Smog Master station at 28 E. Birch Avenue, Fresno (Birch Avenue station), since 2018. He has worked for respondents at other locations, since 2003. Prior to this matter, Mr. Chow had not been issued any citations by the Bureau.

15. Mr. Chow works Monday through Friday from 8:00 a.m. to 5:00 p.m., and every other Saturday from 8:00 a.m. to 3:00 p.m. as a smog check inspector at the Birch Avenue station. Respondent Khosrozadehe generally arrives at the Birch Avenue station at approximately 10:00 a.m. on weekdays, and works as a smog check inspector every other Saturday when Mr. Chow is not working.

16. When Mr. Chow started working at the Birch Avenue station, respondents told him he needed to be careful, because they were on probation and the Bureau might send undercover operators with automobiles for inspection. Respondents told Mr. Chow to take his time during inspections, and to ask for a second opinion if needed.

17. Respondents provide smog check reference materials at the Birch Avenue station. The reference materials do not provide any pictures of PCV valves. Mr. Chow acknowledged on cross-examination that respondents did not provide him any additional training following the citation he received in this matter. Respondents do not have regular meetings with him about smog testing processes and procedures. They just tell him to "do it right."

18. Mr. Chow does not recall inspecting the Ford Focus. He acknowledged on cross-examination that the computer program for smog inspections prompts him at each step of the visual inspection, including the PCV valve. He does not know how he failed to see the missing PCV valve.

19. Mr. Chow has never before seen a vehicle with a PCV valve removed and replaced with a bolt, as in this case, except once in a Bureau undercover run at a different Smog Master location where he was working for respondents.

TESTIMONY OF MASSOUD KHOSROZADEHE

20. Mr. Khosrozadehe has been licensed as a smog check inspector since approximately 2001, and a partner with Farhad Arbabzadeh in the ownership of Smog Master since 2003. Mr. Arbabzadeh opened the Birch Avenue station in 1999. Mr. Khosrozadehe's responsibilities include managing the Birch Avenue station, and performing smog inspections. He works five to six days per week, and alternates Saturdays with Mr. Chow.

21. Mr. Khosrozadehe asked Mr. Chow to work at the Birch Avenue station shortly after the Bureau served the accusation in respondents' prior disciplinary matter in Case No. 79/16-9952. Mr. Khosrozadehe believed Mr. Chow did not present a risk of error based on his years of experience and then-clean record with the Bureau.

Mr. Khosrozadehe reviews the smog inspection paperwork at the Birch Avenue station once or twice per week to check for any mistakes. He continues to have a high level of confidence in Mr. Chow.

22. Mr. Chow knows testing procedures very well, and sometimes calls Mr. Khosrozadehe with questions regarding aftermarket parts or other components if he is unsure. Mr. Chow is the type of inspector who does things correctly and "does not bend the rules." In Mr. Khosrozadehe's experience, Mr. Chow will not incorrectly "pass" a vehicle on a smog inspection.

23. Mr. Khosrozadehe was not present in the shop when Mr. Chow inspected the Ford Focus in this matter. Mr. Chow performed the inspection at approximately 9:30 a.m., and Mr. Khosrozadehe generally arrives at approximately 10:00 a.m.

24. Mr. Khosrozadehe provides a Mitchell guide in hard copy for the technicians. He does not provide online guides. He has not looked into outside

training or continuing education for the technicians he employs. They have not asked for other books or reference material, though he would provide them if they asked.

25. Mr. Khosrozadehe never rushes any of the technicians he employs. They work at their own pace. He encourages technicians to call him if they have any questions.

Analysis

26. As set forth above, respondents failed to ensure full compliance with the laws and regulations regarding smog inspections when their employee, Mr. Chow, inspected the Ford Focus and signed a VIR falsely stating that it passed the visual inspection when the car could not have passed due to missing PCV system components. As set forth in the Legal Conclusions below, respondents are responsible and subject to discipline based on their employee's conduct in this matter.

27. It is noted that the Bureau's modification (removal of PCV valve components) is something that neither Mr. Chow nor Mr. Rosenberger have ever seen outside the context of a Bureau undercover run. Removal of PCV components does not increase engine performance, and will cause engine damage from excess vapor pressure. These facts do not excuse respondents. Mr. Chow should have noticed the missing PCV components through the exercise of reasonable care, and respondents are responsible for that deficiency. However, the illegal modification in this matter did not involve the type of modification that a smog check station would see when automobile owners modify their vehicles and bring them in for a smog test.

28. The evidence taken as a whole supports the Bureau's allegations that respondents are subject to discipline based on (1) untrue statements regarding the smog test of the Ford Focus, (2) failure to record the odometer reading, (3) failure to

comply with statutes and regulations regarding the smog inspection program, (4) and failure to obey all laws and regulations as required by the terms of respondents' probation.

29. The evidence taken as a whole did not establish that either Mr. Chow or respondents made any statements or representations regarding the Ford Focus or any other matter that were intentionally false, dishonest, or due to gross negligence. For this reason, and the reasons set forth in the Legal Conclusions below, the evidence and applicable law do not support the Bureau's allegations that respondents committed any acts of fraud, dishonesty, or deceit.

30. Respondents have been on probation with the Bureau since March 27, 2019. Bureau representatives met with respondents on June 28, 2019, to help ensure compliance with the terms and conditions of probation. On the same date, the Bureau representative provided written and oral notice to respondents that the Bureau would send undercover vehicles to confirm compliance. Respondents provided a compliance plan as outlined on the probation conference summary. This compliance plan was narrowly focused on preventing the type of clean plugging violations for which respondents are now on probation. Respondents needed a broader and more rigorous compliance plan.

31. Based on the evidence as a whole, and considering the factors in aggravation and mitigation discussed in the Legal Conclusions, it will be consistent with the public interest to allow respondents to retain their licenses and registrations, with terms and conditions of probation to ensure compliance with all laws and regulations. The terms and conditions will apply to all licenses and registrations held by either or both respondents, and all places of business, as further set in the Legal Conclusions below.

Costs

32. Complainant requested, pursuant to Business and Professions Code section 125.3, that respondents be ordered to reimburse the Bureau for reasonable costs of investigation and enforcement in this matter in the total amount of \$9,255.49. In support of this total amount, complainant submitted a Certification of Prosecution Costs and Declaration of Seth A. Curtis, Deputy Attorney General, which states the Bureau has been billed \$6,842.50 for the time members of the Attorney General's Office worked on this matter. Attached to the certification of costs prepared by Mr. Curtis is a computer printout that describes the tasks performed, the amount of time billed, and the billing rate by each professional, which appropriately established the requested enforcement costs. Complainant also included a declaration signed by Enrique Lopez, Bureau Program Representative II, with an attached list of hours, work performed, and costs of investigation totaling \$2,412.99. As set forth in the Legal Conclusions below, the scope of the investigation was appropriate in light of the alleged misconduct and the costs of enforcement and investigation are reasonable.

LEGAL CONCLUSIONS

Burden of Proof

1. In revocation proceedings, the Bureau bears the burden of proving the allegations by a preponderance of the evidence. (*Imports Performance et al. v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) Respondents have the burden of establishing any affirmative defenses.

Causes for Discipline

UNTRUE OR MISLEADING STATEMENTS

2. Business and Professions Code section 9884.7, subdivision (a)(1), provides that the Bureau may discipline an ARD registration if the ARD, or any automotive technician, employee, partner, officer, or member of the ARD makes or authorizes any 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."

3. The evidence established that respondents' employee, Kevin Chow, made a false statement on the VIR indicating that the Ford Focus passed the visual inspection, which Mr. Chow should have known was untrue by the exercise of reasonable care. Respondents are responsible to the Bureau for Mr. Chow's false statement. It is well established that a licensee is responsible to the licensing authority for the conduct of employees in the course of the licensed business. (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192.) Moreover, a licensee "may not insulate himself from regulation by electing to function through employees" (*Camacho v. Youde* (1979) Cal.App.3d 161, 165.) Based on the Factual Findings and Legal Conclusions, respondents' ARD registration number 228231 is subject discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

FRAUD

4. Business and Professions Code section 9884.7, subdivision (a)(4), provides that the Bureau may discipline an ARD registration if the ARD, or any automotive technician, employee, partner, officer, or member of the ARD engages in any "conduct that constitutes fraud." For purposes of this section, Business and Professions Code

section 9884.7, subdivision (e), defines fraud as including but not limited to the following:

- (1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.
- (2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.
- (3) A promise or representation not made honestly and in good faith.
- (4) An intentional failure to disclose a material fact.
- (5) Any act in violation of Section 484 of the Penal Code [theft].

5. Civil Code section 1572, subdivision (2), defines actual fraud to include enumerated acts committed "with intent to deceive another party." The evidence did not establish that respondents or Mr. Chow acted with an intent to deceive.

6. Civil Code section 1573 defines constructive fraud as consisting

- (1) [i]n any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading

another to his prejudice, or to the prejudice of any one claiming under him; or,

(2) [i]n any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

7. The evidence did not establish that Mr. Chow or respondents misled "another to his prejudice, or to the prejudice of any one claiming under him" Nor did the evidence establish that Mr. Chow or respondents engaged in an act or omission that the law declares to be fraudulent. The essential elements of fraud are (1) a false representation, and (2) knowledge of the falsity. (*Downey Venture v. LMI Ins. Co.* (1998) 66 Cal. App.4th 478, 510; 34A Cal.Jur. (2022) Fraud and Deceit, § 9.) The evidence did not establish that either respondents or Mr. Chow knew the VIR signed by Mr. Chow was false.

8. The evidence did not establish that Mr. Chow or respondents made any representations that were intentionally false or due to gross negligence, dishonest or made in bad faith, or that they intentionally failed to disclose a material fact or committed any violation of Penal Code section 484.

9. Based on the Factual Findings and Legal Conclusions, respondents' ARD registration number 228231 is not subject discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

FAILURE TO RECORD ODOMETER READING

10. Business and Professions Code section 9884.7, subdivision (a)(2), provides that the Bureau may discipline an ARD registration if the ARD, or any automotive

technician, employee, partner, officer, or member of the ARD causes or allows "a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair."

11. The evidence established that respondents' employee allowed the BAR undercover operator to sign the work order that did not include the odometer reading of the Ford Focus. Based on the Factual Findings and Legal Conclusions, respondents' ARD registration number 228231 is subject discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(2).

VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM

12. Health and Safety Code section 44072.2, subdivision (a), provides that the Bureau may discipline a license "if the licensee, or any partner, officer, or director thereof" violates any law under the motor vehicle inspection program. Health and Safety Code section 44012, subdivision (f), and section 44015, subdivisions (a) and (b), are included in the motor vehicle inspection program. Health and Safety Code section 44012, subdivision (f), requires that a smog check inspection include a visual inspection of a vehicle's emission control components. Health and Safety Code section 44015, subdivisions (a) and (b), provide that a "licensed smog check station shall not issue a certificate of compliance, except . . . to any vehicle that meets. . . . [¶] . . . [¶] . . . the requirements of Section 44012.

13. The evidence established that respondents' employee, Kevin Chow, did not include a visual inspection of the PCV vehicle emission components on the Ford Focus, and that he signed the VIR by which he falsely certified that the Ford Focus passed the visual inspection when it could not have passed because of the missing PCV components. Respondents are responsible to the Bureau for Mr. Chow's

certification of the false VIR. (*Arenstein v. California State Bd. of Pharmacy, supra*, 265 Cal.App.2d at p. 192; *Camacho v. Youde, supra*, 95 Cal.App.3d at p. 165.) Based on the Factual Findings and Legal Conclusions, respondents' Smog Check, Test Only, Station License number TC 228231, is subject discipline pursuant to Health and Safety Code sections 44072.2, subdivision (a); 44012, subdivision (f); and 44015, subdivisions (a) and (b).

FAILURE TO COMPLY WITH REGULATIONS

14. Health and Safety Code section 44072.2, subdivision (c), provides that the Bureau may discipline a licensee who violates any regulation promulgated pursuant to the motor vehicle inspection program, including California Code of Regulations (Regulation), title 16, sections 3340.35, subdivision (c), and 3340.42. Regulation section 3340.35, subdivision (c), provides that a licensed station shall issue a certificate of compliance or noncompliance only for vehicles that have "been inspected in accordance with the procedures specified in section 3340.42 . . . and [have] all the required emission control equipment devices installed and functioning correctly." Regulation section 3340.42, subdivision (b)(1), requires that all vehicles subject to the smog inspection program shall receive a "visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed."

15. The evidence established that respondents' employee, Mr. Chow, did not include a visual inspection of the PCV vehicle emission components on the Ford Focus, and that he signed the VIR by which he falsely certified the Ford Focus passed the visual inspection when it could not have passed because the missing PCV components. Respondents are responsible to the Bureau for Mr. Chow's failure to conduct a visual inspection of the PCV components and his certification of the false VIR. (*Arenstein v.*

California State Bd. of Pharmacy, supra, 265 Cal.App.2d at p. 192; *Camacho v. Youde, supra*, 95 Cal.App.3d at p. 165.) Based on the Factual Findings and Legal Conclusions, respondents' Smog Check, Test Only, Station License number TC 228231, is subject discipline pursuant to Health and Safety Code section 44072.2, subdivision (c); and Regulation sections 3340.35, subdivision (c), and 3340.42, subdivision (b)(1).

DISHONESTY, FRAUD AND/OR DECEIT

16. Health and Safety Code section 44072.2, subdivision (d), provides that the Bureau may discipline a smog check inspector who "commits any act involving dishonesty, fraud, or deceit whereby another is injured." The evidence did not establish that "another" was "injured" by Mr. Chow's false certification or respondents' related violations, even taking into account that the laws and regulations regarding emissions controls are intended to protect air quality for the people of the State of California. It is therefore not necessary to a decision in this matter to consider whether Mr. Chow or respondents meets other elements of fraud as set forth in Health and Safety Code section 44072.10, subdivision (c). Based on the Factual Findings and Legal Conclusions, respondents' Smog Check, Test Only, Station License number TC 228231, is not subject discipline pursuant to Health and Safety Code section 44072.2, subdivision (d).

Cause to Revoke Probation

FAILURE TO OBEY ALL LAWS

17. The terms and conditions of probation in Case No. 79/16-9952, effective March 27, 2019, require respondents to "comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondent." Based on the Factual Findings and Legal Conclusions, respondents failed to comply

with state statutes and regulations governing BAR registrations and licenses, and thereby failed to comply with the terms and conditions of probation.

Discipline of Additional Licenses and Registrations

18. Health and Safety Code section 44072.8 provides that when the Bureau has suspended or revoked a license following a hearing, the Bureau may suspend or revoke any additional licenses in the name of the licensee(s). As set forth below, respondents' Smog Check, Test Only, Station License number TC 228231 is subject to discipline a stayed revocation and suspension. For this reason, any other license issued by the Bureau to either or both respondents is subject to discipline.

19. Business and Professions Code section 9884.7, subdivision (c), provides that the Bureau may suspend, revoke, or place on probation the registration for all places of business operated by the automotive repair dealer if that automotive repair dealer has "engaged in a course of repeated and willful violations" Respondents have engaged in a course of repeated violations, as established by the fact that they are currently on probation for smog testing violations, and are now facing discipline for new violations. These are willful violations. In *Acco Engineered Systems, Inc. v. Contractors' State License Bd.* (2018) 30 Cal.App.5th 80, 93, the court recognized that the definition of "willful" from Penal Code section 7 has been adopted in other cases involving discipline of licensees in other professions. Penal Code section 7's definition of "willful" requires only a general intent to perform an act, not a specific intent to violate a law. (*Acco Engineered Systems, Inc. v. Contractors' State License Bd.*, *supra*, 30 Cal.App.5th 80, 90.) In the instant matter, Mr. Chow acted with general intent when he conducted a smog test on the Ford Focus and signed the VIR. Respondents are responsible for his conduct. (*Arenstein v. California State Bd. of Pharmacy*, *supra*, 265 Cal.App.2d at p. 192; *Camacho v. Youde*, *supra*, 95 Cal.App.3d at p. 165.) For these

reasons, the registrations issued by the Bureau for any or all places of business operated by either or both respondents are subject to discipline.

Appropriate Discipline

20. As set forth above, respondents are subject to discipline for the following: (1) untrue or misleading statements that the Ford Focus passed a smog inspection; (2) failure to record the odometer reading on the work order for the Ford Focus; (3) failure to ensure the Ford Focus was tested and certified in compliance with the laws regarding the vehicle inspection program; and (4) failure to comply with the regulations regarding the vehicle inspection program. Cause does not exist to discipline respondents based on the allegations of fraud, and dishonesty, fraud, or deceit. Respondents are also subject to probation revocation on the basis that they failed to comply with the term of probation that they obey all laws and regulations governing Bureau registrations and licenses.

21. The Bureau promulgated Guidelines for Disciplinary Orders and Terms of Probation (Guidelines) for the purpose of determining the appropriate level of discipline. The Guidelines include factors in aggravation and mitigation. The factors in aggravation listed in the Guidelines are as follows: (1) prior warnings from the Bureau; (2) prior office conferences with the Bureau; (3) prior citations; (4) history of formal disciplinary action; (5) failure to permit Bureau inspection of records; (6) evidence of abuse of mechanics lien; (7) evidence of attempts to intimidate consumers; (8) evidence of negligent or willful improper repair work that endangers consumers; (9) evidence that the unlawful act was a pattern of practice; (10) failure to comply with Bureau request for corrective action/retraining; (11) currently on probation for improper acts; (12) failure to successfully complete prior probation; (13) failure to pay

court judgment to victim; (14) violation of previous court order; (15) evidence of any other conduct which constitutes fraud or gross negligence.

22. Respondents are currently on probation in Case No. 79/16-9952, which they violated by failing to obey all statutes and regulations. When respondents began probation, they had an office conference with Bureau staff during which they were warned that the Bureau would send undercover operators to their shop to monitor compliance. The fact that respondents' employee, Mr. Chow, subsequently passed the Ford Focus when it could not have passed because of the missing PCV valve is part of a pattern of respondents' employees failing to follow the laws and regulations in conducting smog tests, as evident from the nine illegal tests for which respondents are now on probation.

23. The factors in mitigation as set forth in the Guidelines are as follows: (1) evidence that respondents have implemented the Bureau's suggested resolution to a consumer complaint; (2) evidence of restitution to a consumer and/or correction of the consumer's vehicle; (3) evidence of voluntary participation in retraining of respondents or their employees; (4) evidence of voluntary purchase of proper diagnostic equipment and manuals; (5) evidence of a medical condition that temporarily prevented respondents from supervision of employees; (6) absence of prior disciplinary action; (7) evidence that the pattern was not part of a pattern or practice; (8) evidence of no loss to consumer or damage to consumer property including any undercover vehicle; (9) evidence of retraining and other steps to minimize recurrence; (10) evidence of resolution of all consumer complaints; (11) evidence of substantial measures to correct business practices and/or operations so as to minimize the likelihood of recurrent violations; (12) evidence of any other mitigating conduct.

24. Of the mitigating factors most relevant in this matter, respondents did not provide evidence of voluntary retraining for themselves or their employees. They did, however, undertake some measures as outlined in the probation conference summary to minimize the likelihood of new violations related to clean plugging. In this respect, these measures appear to have been successful. However, respondents have not proactively taken steps to prevent violations unrelated to clean plugging. They rely too much on their technicians to "do it right" and to ask for guidance or resource material. This approach does not ensure compliance, as this case clearly demonstrates. Public protection requires that respondents be far more proactive in training and monitoring their employees. This must include the ability to spot a broad range of vehicle modifications, including those that are not typical of vehicle owners, and might appear only during a Bureau undercover run, as with the missing PCV valve.

25. Based on the evidence as a whole, public safety will be ensured by imposing a five-year term of probation to cover any and all licenses and registrations issued by the Bureau to either or both respondents. Probation will include optional conditions of (1) a ten-day suspension of all licenses and registrations to reinforce the significance of this matter, (2) supervision requirements appropriate in cases such as this where owner absenteeism was a contributing factor to the violations, and (3) a training course applicable to registrants and licensees.

Costs

26. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to

statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of their 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 in light of the alleged misconduct.

27. Complainant seeks a total of \$9,255.49 in costs. Respondents were successful in getting two charges dismissed. However, the scope of the investigation was appropriate in light of respondents' misconduct. When all the *Zuckerman* factors are considered, the cost amount is reasonable.

ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer registration number ARD 228231 and Smog Check, Test Only, Station license number TC 228231 issued to respondents Farhad Arbabzadeh and Massoud Khosrozadehe, doing business as Smog Master are revoked, as are any other licenses or registrations issued by the Bureau to either or both respondents. However, the revocation is stayed, and respondents are placed on probation for five years on the following terms and conditions.

Terms and Conditions of Probation

28. **Actual Suspension:** Automotive Repair Dealer registration number ARD 228231 and Smog Check, Test Only, Station license number TC 228231 issued to respondents Farhad Arbabzadeh and Massoud Khosrozadehe, doing business as Smog Master, and any other licenses or registrations issued by the Bureau to either or both

respondents are suspended for ten (10) consecutive days beginning on the effective date of the Decision and Order.

29. Posting of Sign: During the period of suspension, respondents shall prominently post a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall be approved by BAR and shall remain posted during the entire period of actual suspension.

30. Obey All Laws: During the period of probation, respondents shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondents.

31. Supervision Requirements: Respondents shall not delegate their supervisory duties, as they relate to the business activities relevant to the probationary registration and/or license, to another person during the period of probation. Any persons employed by respondents to carry out such business activities shall be directly supervised by respondents. In the event that a bona fide medical condition arises during the period of probation, which temporarily prevents respondents from exercising direct supervision over employees, notice and medical substantiation of the condition shall be submitted to BAR within ten (10) days of the medical affirmation of the condition.

32. Training Course: Within 180 days of the effective date of this Decision, respondents shall submit to BAR satisfactory evidence of completion of a laws and regulations training course that meets the following requirements:

- The course shall be instructor-led, in a classroom or online setting, and shall include instruction on registrant or licensee compliance with the laws and regulations related to the following areas: (1) Estimate Requirements; (2) Customer Authorization; (3) Invoice Requirements; (4) Accepted Trade Standards; (5) Sublet Repair; (6) Return of Parts; (7) Advertising Requirements; (8) Guarantees and Warranties; and (9) Maintenance of Records.
- The course shall include an examination to verify the respondents can apply the laws and regulations in daily automotive repair transactions.
- The course shall have a minimum of eight (8) hours of dedicated time to instruction and examination, where examination time shall be between thirty (30) minutes to an hour.
- The course shall require a minimum score of 70 percent on the examination to provide proof of completion.

33. **Quarterly Reporting:** During the period of probation, respondents shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, 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.

34. **Reporting Financial Interests:** Respondents shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR 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.

35. **Access to Examine Vehicles and Records:** Respondents 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. Respondents shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

36. **Tolling of Probation:** If, during probation, either respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondents shall notify BAR 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 respondents obey all laws, shall be held in abeyance during any period of time of 30 days or more in which either 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 either 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.

37. **Violation of Probation:** If respondents violate or fail to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondents are served notice of BAR'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.

38. **Maintain Valid License:** Respondents shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If either or both respondents' registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by respondents within 30 days of that date. If either or both respondents' registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal respondents' 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.

39. **Cost Recovery:** Respondents shall pay the Bureau of Automotive Repair \$9,255.49 for the reasonable costs of the investigation and enforcement of Case No. 79/21-6737. Respondents shall make such payment within thirty (30) days of the effective date of this Decision, or according to a payment plan acceptable to the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondents 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. 79/21-6737. 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. BAR 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.

40. **Completion of Probation:** Upon successful completion of probation, respondents' affected registration and/or license will be fully restored or issued without restriction, if respondents meet all current requirements for registration or licensure and have paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

41. **License Surrender:** Following the effective date of a decision that orders a stay of invalidation or revocation, if respondents cease business operations or are otherwise unable to satisfy the terms and conditions of probation, respondents may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate the respondents' 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.

//

//

//

//

Respondents may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If respondents apply to BAR for a registration or license at any time after that date, respondents must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

DATE: August 16, 2022

Timothy Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings