

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

In the Matter of the Accusation Against:

ANDREW W. LABIB
dba AW SMOG CENTER
849 East Avenue I
Lancaster, CA 93535

Case No. 79/16-136

OAH No. 2016070594

Automotive Repair Dealer Registration
No. ARD 260432
Smog Check Test Only Station License
No. TC 260432,

Respondent.

DECISION


The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517, subdivision (c)(2)(C), the typographical errors in the Proposed Decision are corrected as follows:

1. Page 1, case caption: License number "TC 26043332" is corrected to "TC 260432".

The technical or minor change above does not affect the factual or legal basis of the Proposed Decision.

This Decision shall become effective February 3, 2017.

DATED: 12/28/2016



RYAN MARCROFT
Assistant Chief Counsel
Division of Legal Affairs
Department of Consumer Affairs

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

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Automotive Repair Dealer Registration
No. ARD 260432
Smog Check Test Only Station License
No. TC 26043332,

Respondent.

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PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on October 12, 2016, in Los Angeles, California. Complainant was represented by William D. Gardner, Deputy Attorney General. The owner of AW Smog Center, Andrew W. Labib (Respondent), was present and represented himself.

Oral and documentary evidence was received and argument was heard. The record was closed, and the matter was submitted for decision on October 12, 2016.

FACTUAL FINDINGS

1. On June 6, 2016, Complainant Patrick Dorais filed the Accusation while acting in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.

2. On January 12, 2010, the Bureau issued Automotive Repair Dealer (ARD) Registration Number ARD 260432 to Respondent, doing business as AW Smog Center. On February 16, 2010, the Bureau issued Smog Check Test Only Station License Number TC 260432 to Respondent. The ARD Registration and Smog Check Test Only Station License are scheduled to expire on December 31, 2016.

3(a). Respondent is not a licensed smog check technician. He opened AW Smog Center to provide business for his father, Wajdy Labib, who is a licensed smog check technician. However, from about August 2014 until May 2015, Respondent hired another licensed smog check technician, F.J.,¹ to conduct smog inspections at AW Smog Center when Respondent's father was out of the country and when he later suffered from health problems and underwent surgeries.

3(b). After May of 2015, F.J. left AW Smog Center to open his own Bureau-licensed smog check station.

3(c). After May of 2015, F.J. was named as a respondent in another Bureau-filed Accusation, and the Bureau thereafter revoked his smog technician license and his smog check station license based on the allegations in this case.

4(a). California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. The smog check program requires owners to submit their vehicles to smog inspections and obtain certificates of compliance. Licensed smog check technicians at licensed smog check stations conduct these mandated smog check inspections.

4(b). The Bureau is responsible for the licensure and regulation of smog check stations and smog check inspectors. The Bureau plays a key role in maintaining air quality by verifying that licensees properly inspect motor vehicles. The purpose of a proper smog inspection is to determine that all required emission control devices and systems are installed and functioning properly and to detect and reduce tampering and emission control failures.

5(a). A smog inspection consists of a three-part test. The emission sample test analyzes tail pipe emissions obtained while the vehicle's engine is running. The visual inspection requires the smog inspector to verify the presence of required emission control systems and components. The functional test requires the smog inspector to physically test certain emission system components.

5(b). As part of the smog test on vehicles built after 1999, the smog check inspector must retrieve information from the tested vehicle's on-board computer. When that information is retrieved, it is relayed to a database maintained by the Bureau.

5(c). In March 2015, the smog inspection process was updated for vehicles constructed after 1999. The updated smog inspection requires the smog inspector to perform an On Board Diagnostics Generation Two (OBDII) functional test in which the inspector connects a Data Acquisition Device (DAD), a scan tool, to the vehicle's Diagnostic Link

¹ The technician's initials are used in lieu of his full name to protect his privacy because during the hearing, Respondent, a licensed respiratory care therapist, noted that they first met when F.J. was his patient.

Connector (DLC), which is a plug found inside the vehicle's passenger cabin. Through an internet connection, the DAD forms a link between the vehicle's DLC and the Bureau's On Board Diagnostic Inspection System (BAR-OIS). When requested by the BAR-OIS, the DAD retrieves OBDII data from the vehicle and transmits it to the Bureau's database. Some of the data retrieved includes the Vehicle Identification Number (VIN), the vehicle's communication protocol, and the Parameter Identification count.

5(d). For model-year 2005 and newer vehicles and on some earlier model-years, the VIN is programed into the vehicle's OBDII system electronic control unit (ECU). The electronically programed VIN (eVIN) is captured by the BAR-OIS during a smog inspection and under normal circumstances matches the physical VIN on the vehicle.

5(e). The communication protocol is a specific combination of letters and numbers used by each vehicle's on-board computer to relay information to scan tools and other computers such as the BAR-OIS. The communication protocol is programmed into the vehicle's on-board computer during manufacture and does not change.

5(f). Parameter Identifications (PIDs) are data points reported by the vehicle's OBDII system ECU to the DAD and BAR-OIS. Examples of PIDs are engine speed/rpm, vehicle speed, engine temperature and other input/output values utilized by the OBDII system ECU. The PID count is the number of data points reported by the OBDII system. This is programed during manufacture and does not change. Each vehicle reports a specific PID count with slight variations based on whether the vehicle is equipped with an automatic or manual transmission and in rare occurrences on vehicle trim variations.

5(e). If a vehicle passes the visual, functional, and tailpipe tests, it passes the overall smog inspection. A certificate of compliance, with a unique control number, is issued and transmitted electronically to the Vehicle Information Database (VID) maintained by the Bureau. The VID contains the dates and times of all smog inspections, the identity of the vehicles tested (license plates and VINs), all data obtained during the smog check inspections, and the identities of the technicians and stations performing the inspections. Bureau employees have access to the VID and use the information stored there when conducting investigations.

6. "Clean plugging" is a method used by some smog check stations and smog check inspectors to issue fraudulent smog check certificates of compliance. "Clean plugging" involves using another vehicle's properly-functioning OBDII system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent certificates of compliance to vehicles which are not in smog compliance or not present for testing. This is done by plugging the connector of the DAD into a vehicle other than that which is being certified or into an OBDII simulator which generates its own data to obtain certification.

7(a). In May of 2015, Jorge Echevarria (Echevarria), Program Representative II with the Bureau, conducted an investigation in which he reviewed BAR-OIS test data for inspections performed at AW Smog Center between April 1, 2015, and April 21, 2015. Echevarria's investigation revealed 51 instances in which AW Smog Center issued certificates of compliance to vehicles where the VIN numbers entered by Respondent's employee as those for the vehicles undergoing smog inspection did not match the eVINs which were electronically transmitted to the BAR-OIS during the inspection process.

7(b). For example, on April 1, 2015, the certificates of compliance were issued to a 2005 Chevrolet Silverado and to a 2007 Nissan 350Z based on data transmitted to the BAR-OIS including identical eVINs for both vehicles which did not match either of the Department of Motor Vehicles (DMV) VINs for those vehicles but instead matched the DMV VIN for a 2000 Ford Expedition. Similar documented discrepancies for each of the 51 vehicles demonstrated that the 51 smog certificates issued by Respondent's employee at AW Smog Center resulted from fraudulent smog inspections using the clean plugging method.

7(c). Echevarria also analyzed the BAR-OIS test data for inspections performed at AW Smog Center on May 5, 2015. The data from that date revealed the issuance of two additional fraudulent certificates of compliance using the clean plugging method.

7(d). All 53 of the vehicles receiving the fraudulent smog certificates were inspected and passed by Respondent's employee, F.J.

8. Respondent testified credibly that he did not participate in the fraudulent activity and that he was unaware that F.J. had engaged in clean plugging at AW Smog Center. However, Respondent acknowledged that, as the station owner, he is responsible for ensuring that "everything is done right" at the station. Since his licensure in 2010, Respondent has tried to ensure that "everything is proper" so that he can keep his business operating and his father employed. Respondent stated that his father, who was the main technician at AW Smog Center until his absence and illness, "does everything by the book." Respondent noted that he has no motivation to engage in fraudulent activity because he could lose his business which he had opened to provide his father with a source of income. Respondent also noted that it would be foolish for him to be involved in such fraudulent activity because his respiratory therapist license could be subject to discipline.

9(a). In 2014, when Respondent was seeking to hire a substitute technician during his father's absence, Respondent sought to ensure that his employee met the expected standards. When he hired F.J., Respondent verified that F.J. was licensed by the State, and Respondent spoke to F.J.'s other employers to obtain good references. Because Respondent was not present at the station during all business hours, he trusted his licensed employee "to do the right thing."

9(b). Additionally, when F.J. first worked at AW Smog Center, Respondent randomly reviewed smog inspection results, and he did not see anything suspicious. Prior to the institution of the new smog inspection requirements in 2015, Respondent was able to

review smog inspection emission results printed and saved at his station, and by reviewing those results he could discern "if something was not right." With the new smog inspection system Respondent is unable to determine from review of test results whether an employee is engaging in clean plugging at his station.

10. Echevarria acknowledged that a smog check station owner is not required to be present at his station during all hours of operation. He also agreed that an owner reviewing test results at end of the day would not know if a vehicle was clean plugged unless the owner had been watching the smog inspector engaging in the clean plugging. Echevarria was unable to articulate a method by which Respondent could determine from review of test results if any employee was engaging clean plugging.

11. Echevarria did not know why smog inspections are not automatically aborted (and fraudulent certificates of compliance averted) when the BAR-OIS detects that the wrong eVIN is transmitted for a vehicle purportedly being inspected. Respondent believes "it is a fault in the system" to allow a vehicle to pass inspection and obtain a certificate of compliance despite the Bureau having information that the technician is "testing a different car." Respondent believes that "there should be a flag . . . to stop that from happening."

12. Respondent noted that F.J. had worked at AW Smog for many months without any problems, so Respondent "did not expect anything bad coming from him." Respondent pointed out that no fraudulent activity was uncovered until after F.J. gave Respondent notice that he was leaving to open his own smog check station. Respondent lamented, "He played me and . . . lied and did all this without my knowledge."

13. Respondent has no prior record of discipline by the Bureau.

14(a). Complainant submitted as evidence of the costs of prosecution of this matter a Certification of Prosecution Costs: Declaration of William Gardner (DAG Declaration), certifying that the Department of Justice, Office of the Attorney General billed the Bureau \$3,520 for legal services provided through October 7, 2016.

14(b). There was no evidence that any of the costs were unreasonable.

14(c). The evidence established that Complainant incurred total costs of \$3,520, all of which are deemed reasonable.

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LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(1), for his employee's making or authorizing statements he knew, or should have known, to be untrue or misleading, as set forth in Factual Findings 2 through 12, and Legal Conclusion 7.

2. Cause exists to discipline Respondent's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(4), for his employee's fraud in issuing certificates of compliance without bona fide inspections, as set forth in Factual Findings 2 through 12, and Legal Conclusion 7.

3. Cause exists to discipline Respondent's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), for his employee's failure in a "material respect to comply with the provisions of this chapter or regulations adopted pursuant to it" by issuing certificates of compliance for vehicles without performing bona fide inspections of the emissions control devices and systems on those vehicles, as set forth in Factual Findings 2 through 12, and Legal Conclusion 7.

4. Cause exists to revoke or suspend Respondent's smog check station license under Health and Safety Code section 44072.2, subdivision (a), for failure to comply with Health and Safety Code sections 44012 and 44015, as set forth in Factual Findings 2 through 12, and Legal Conclusions 7.

5. Cause exists to revoke or suspend Respondent's smog check station license under Health and Safety Code section 44072.2, subdivision (c), for failure to comply with California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42, as set forth in Factual Findings 2 through 12, and Legal Conclusions 7.

6. Cause exists to revoke or suspend Respondent's smog check station license under Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud and deceit, causing injury to another by issuing fraudulent certificates of compliance and depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program, as set forth in Factual Findings 2 through 12, and Legal Conclusions 7.

7(a). Respondent argued that although he is the owner and is responsible for his employees' actions, due to the way the new smog inspection system is set up, he had no way of knowing about F.J.'s fraudulent actions. However, statutory and case law hold Respondent responsible for the actions of his employee.

7(b)(1). Business and Professions Code, section 9884.7 imposes liability on automotive repair dealers for the violations of their employees "related to the conduct of

business of the automotive repair dealer." Specifically, Business and Professions Code section 9884.7, subdivision (a), provides:

The director [of the Department of Consumer Affairs], where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer. (Emphasis added.)

7(b)(2). In this case, F.J.'s violations occurred during the performance of smog inspections which were related to the AW Smog Center's business and which were subject to the requirements of the Automotive Repair Act (Business and Professions Code sections 9880 et seq.). (See Health & Saf. Code, § 44072.8.) Consequently, the Bureau may discipline the ARD registration of Respondent, dba AW Smog Center, for the violations of his employee while conducting those smog inspections.

7(c). Furthermore, for public protection purposes, courts have imposed liability on licensees for the unlawful acts of their employees and agents while engaged in the operation of a regulated and licensed business. (*Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179, 192 (licensed pharmacy responsible for wrongdoing of employees who were licensed pharmacists); see also *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793; *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) The *Arenstein* Court held that, "if a licensee elects to operate his business through employees, he must be responsible to the licensing authority for their conduct in the exercise of his license," and this holds true even if the licensee "does not authorize the unlawful acts and did not have actual knowledge of the activities." (265 Cal.App.2d 179, 192-193.)

7(d). In this case, Respondent was not licensed to personally perform smog inspections and chose to operate his smog inspection business through his employees, including F.J. Therefore, Respondent had a duty to ensure compliance with the laws and regulations governing his licensed business, and he was responsible for F.J.'s violations committed in the exercise of his license. As with *Arenstein*, this holds true even if Respondent did not authorize the unlawful acts or have actual knowledge of them. Consequently, the Bureau may discipline the license of Respondent, dba AW Smog Center, for the violations of his employee, F.J., while conducting smog inspections.

8. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of investigation and prosecution of this matter in the amount of \$3,520 as set forth in Factual Finding 14.

9(a). Respondent's licensure required him to monitor his employees' actions to ensure that they were engaging in lawful activity. Respondent failed to meet his

responsibility for oversight of the activities of his employee, F.J., who engaged in clean plugging and the fraudulent issuance of 53 certificates of compliance. However, Respondent was not present when the violations occurred, he did not participate in the fraudulent activity, and he was unaware that F.J. had engaged in clean plugging at AW Smog Center. Despite reviewing the station's test results, Respondent had no way of discovering F.J.'s fraudulent activity other than being present at the facility during all smog inspections, which was precluded by Respondent's employment as a respiratory care therapist. Although it seems unfair to Respondent (as an owner who is striving for proper oversight of his employees), the Bureau has chosen to keep the eVIN error from aborting the smog inspections during suspected clean plugging activity, thus precluding a way for smog check station owners to detect and eliminate employee fraud. Respondent was careful about whom he hired and conducted reviews of the smog test results generated by his employees, but this was insufficient to discover his employee's deceit. At this time, given Echavarría's testimony, the best way for a station owner to detect clean plugging activity is by constant surveillance via video recording or physical presence of the owner or trusted manager.

9(b). Respondent does not have a history of prior discipline, and he has a five-year history of compliance with smog check laws and regulations prior to the current violations.

9(c). Given Respondent's admission of responsibility for his employee's conduct, his attempts to maintain oversight through review of smog test results (which was somewhat thwarted by the new system's set up), his history of prior compliance, and all of the circumstances of his case, supervision by the Bureau via probationary conditions is not necessary to protect the public health, safety and welfare. However, given the extent of the his employee's fraudulent behavior and Respondent's need to put in place safeguards to prevent recurrence, a short period of suspension should afford Respondent the opportunity to establish a plan for future compliance with the laws and rules governing smog inspections.

ORDER

1. Automotive Repair Dealer Registration Number ARD 260432, issued to Respondent Andrew W. Labib, doing business as AW Smog Center, is suspended for 15 consecutive days, beginning on the effective date of the Decision and Order.

2. Smog Check Station License Number TC 260432, issued to Respondent Andrew W. Labib, doing business as AW Smog Center, is suspended for 15 consecutive days, beginning on the effective date of the Decision and Order.

3. During the period of suspension, Respondent shall prominently post a sign or signs, provided by the Bureau, 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 Bureau and shall remain posted during the entire period of actual suspension.

4. Within 120 days of the effective date of this Decision, Respondent shall reimburse the Bureau \$3,520 for its prosecution costs in this case.

DATED: October 21, 2016

DocuSigned by:
Julie Cabos-Owen
180291 930756452

JULIE CABOS-OWEN
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 Accusation Against:

Case No. 79/16-136

13 **ANDREW W. LABIB dba AW SMOG**
14 **CENTER**
15 **849 East Avenue I**
Lancaster, CA 93535

ACCUSATION

16 **Mailing:**
17 **3122 Solmira Place**
Palmdale, CA 93551

18 **Automotive Repair Dealer Registration No.**
ARD 260432
19 **Smog Check, Test Only, Station License No.**
TC 260432,
20

21 Respondent.

22 **PARTIES**

23 1. Petitioner is duly appointed and serving as the Chief of the Bureau, and files this
24 Petition in his official capacity.

25 2. On or about January 12, 2010, the Bureau of Automotive Repair issued Automotive
26 Repair Dealer Registration Number ARD 260432 to Andrew W. Labib, dba AW Smog Center.
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1 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
2 charges brought herein and will expire on December 31, 2016, unless renewed.

3 3. On or about February 16, 2010, the Bureau of Automotive Repair issued Smog
4 Check, Test Only, Station License Number TC 260432 to Andrew W. Labib, dba AW Smog
5 Center ("Respondent"). The Smog Check, Test Only, Station License was in full force and effect
6 at all times relevant to the charges brought herein and will expire on December 31, 2016, unless
7 renewed.

8 JURISDICTION

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10 4. Business and Professions Code ("BPC") section 9884.13 provides, in pertinent part,
11 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed
12 with a disciplinary proceeding against an automotive repair dealer or to render a decision
13 temporarily or permanently invalidating (suspending or revoking) a registration.

14 5. Section 9889.1 of the BPC provides, in pertinent part, that the Director may suspend
15 or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
16 Automotive Repair Act.

17 6. Section 9889.7 of the BPC provides, in pertinent part, that the expiration or
18 suspension of a license by operation of law or by order or decision of the Director or a court of
19 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
20 proceed with any disciplinary proceedings.

21 7. Health and Safety Code ("HSC") section 44002 provides, in pertinent part, that the
22 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
23 the Motor Vehicle Inspection Program.

24 8. Section 44072.6 of the HSC provides, in pertinent part, that the expiration or
25 suspension of a license by operation of law, or by order or decision of the Director of Consumer
26 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
27 of jurisdiction to proceed with disciplinary action.

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“(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities

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

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

14. Section 44072.8 of the HSC states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

REGULATORY PROVISIONS

15. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c), states:

“The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.”

16. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check station “shall issue a certificate of compliance or noncompliance 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 and has all the required emission control equipment and devices installed and functioning correctly.”

17. CCR, title 16, section 3340.42, sets forth specific emissions test methods and procedures which apply to all vehicles inspected in the State of California

COST RECOVERY

18. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board “may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

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DATA ANALYSIS OF CLEAN PLUGGING ACTIVITIES

19. On March 9, 2015, the Bureau implemented a policy change requiring the use of an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer diesel powered vehicles 14,000 GVW and under. The OIS Test Data provides the Bureau with a wealth of electronic information about the vehicle that is connected to the system, making the OIS a vital tool in the Bureau's ongoing efforts to root out fraudulent conduct in the smog inspection business. For example, among other things, the OIS Bureau Test Data reveals any differences between the Vehicle Identification Numbers (VIN) entered into the emission inspection system (i.e., "BAR 97") by the smog technician at the time of the inspection and the VIN electronically programmed into the vehicle by the manufacturer ("eVIN"). Such discrepancies between the VIN manually entered by the smog technician and the eVIN programmed into the vehicle by the manufacturer are indicative of illegal "clean plugging".¹

20. In May 2015, Bureau program representative Jorge Echevarria conducted an investigation in which he reviewed specific OIS Test Data for inspections performed at AW Smog Center between April 1, 2015, and April 21, 2015. Representative Echevarria's investigation revealed fifty-one (51) instances in which the VIN numbers entered for the vehicles at the time of their inspections by Respondent's employee technician did not match the eVINS that were transmitted electronically by the vehicles during the testing process. These documented discrepancies between the VIN numbers entered by Respondent's employee at the time of inspection and the eVINS electronically transmitted from the vehicles during the inspections confirm that the fifty-one (51) smog certificates issued by Respondent resulted from fraudulent vehicle inspections involving the clean plugging method described above. Thereafter, Bureau program representative Echevarria analyzed the OIS Test Data for several inspections performed at AW Smog Center on May 5, 2015, which revealed two (2) additional instances of clean

¹ Clean plugging refers to the use of another vehicle's properly functioning On Board Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog compliance and/or not present for testing.

plugging. The following chart ("Table 1") illustrates the documented clean plugging activities at Respondent's station between April 1, 2015, and April 21, 2015, and on May 5, 2015.

Table 1

Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Details
4/1/2015 0931 - 0943 hours	2005 Chevrolet Silverado 7U05474	YP707037C	eVIN transmitted was for 2000 Ford Expedition not a 2005 Chevrolet Silverado, proving the vehicle was illegally clean plugged by Respondent's employee.
4/1/2015 0944 - 0947 hours	2007 Nissan 350Z 6KID059	YP707038C	eVIN transmitted was for 2000 Ford Expedition not a 2007 Nissan 350Z, proving the vehicle was illegally clean plugged by Respondent's employee.
4/1/2015 1608 - 1613 hours	2000 Mitsubishi Mirage 6JRK030	YP707042C	eVIN transmitted was for 2007 Toyota Camry, not a 2000 Mitsubishi Mirage, proving the vehicle was illegally clean plugged by Respondent's employee.
4/1/2015 1618 - 1622 hours	2008 Mitsubishi Lancer Evolution 6DJR369	YP707044C	eVIN transmitted was for 2007 Toyota Camry not a 2008 Mitsubishi Lancer Evolution, proving the vehicle was illegally clean plugged by Respondent's employee.

1	4/2/2015	2007 Chevrolet Trail Blazer	YP707047C	eVIN transmitted was for 2009 Chrysler Town & Country not a 2007 Chevrolet Trail Blazer, proving the vehicle was illegally clean plugged by Respondent's employee.
2	0959 - 1002 hours	5YQD239		
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6	4/2/2015	2006 Dodge Charger	YP707050C	eVIN transmitted was for 2002 Chevrolet Express not a 2006 Dodge Charger, proving the vehicle was illegally clean plugged by Respondent's employee.
7	1129 - 1134 hours	5XGB190		
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10				
11	4/2/2015	2002 Nissan Altima	YP846503C	eVIN transmitted was for 2003 Chevrolet Cavalier not a 2002 Nissan Altima, proving the vehicle was illegally clean plugged by Respondent's employee.
12	1624 - 1630 hours	VIN# 1N4AL11DX2C117885		
13				
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16	4/3/2015	2007 Chevrolet Colorado	YP846509C	eVIN transmitted was for 2005 Chevrolet Silverado not a 2007 Chevrolet Colorado, proving the vehicle was illegally clean plugged by Respondent's employee.
17	1218 - 1222 hours	8H97818		
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20				
21	4/3/2015	2003 Chevrolet Monte Carlo	YP846510C	eVIN transmitted was for 2003 Chevrolet Cavalier not a 2003 Chevrolet Monte Carlo, proving the vehicle was illegally clean plugged by Respondent's employee.
22	1227 - 1230 hours	5BAH219		
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4/3/2015 1231 - 1233 hours	2000 Mitsubishi Galant 4VOX754	YP846511C	eVIN transmitted was for 2003 Chevrolet Cavalier not a 2000 Mitsubishi Galant, proving the vehicle was illegally clean plugged by Respondent's employee.
4/3/2015 1606 - 1609 hours	2005 Dodge Neon SRT 7AMM789	YP846518C	eVIN transmitted was for 2002 Oldsmobile Silhouette not a 2005 Dodge Neon SRT, proving the vehicle was illegally clean plugged by Respondent's employee.
4/6/2015 1104 - 1109 hours	2004 Chevrolet Impala 6GWD181	YP846529C	eVIN transmitted was for 2001 Lincoln Navigator not a 2004 Chevrolet Impala, proving the vehicle was illegally clean plugged by Respondent's employee.
4/6/2015 1453 - 1457 hours	2001 Volkswagen Jetta GLS 6GJ11992	YP846532C	eVIN transmitted was for 2004 Ford Expedition not a 2001 Volkswagen Jetta GLS, proving the vehicle was illegally clean plugged by Respondent's employee.
4/6/2015 1458 - 1502 hours	2005 Chevrolet Tahoe C1500 6SNU694	YP846533C	eVIN transmitted was for 2004 Ford Expedition not a 2005 Chevrolet Tahoe C1500, proving the vehicle was illegally clean plugged by Respondent's employee.

1	4/6/2015	2002 Mercury	YP846536C	eVIN transmitted was
2	1533 - 1537 hours	Mountaineer		for 2005 Dodge
3		4XEC994		Magnum not a 2002
4				Mercury Mountaineer,
5				proving the vehicle was
6				illegally clean plugged
7				by Respondent's
8				employee.
9				
10	4/6/2015	2003 Ford F150	YP846537C	eVIN transmitted was
11	1638 - 1643 hours	8Z59373		for 2011 Toyota not a
12				2003 Ford F150,
13				proving the vehicle was
14				illegally clean plugged
15				by Respondent's
16				employee.
17				
18	4/7/2015	2002 Toyota Camry	YP846542C	eVIN transmitted was
19	1627 - 1630 hours	4YRV946		for 2007 Kia Spectra not
20				a 2002 Toyota Camry,
21				proving the vehicle was
22				illegally clean plugged
23				by Respondent's
24				employee.
25				
26	4/8/2015	2004 Mitsubishi Galant	YP846545C	eVIN transmitted was
27	1308 - 1312 hours	6RAA160		for 2001 GMC Sierra
28				not a 2004 Mitsubishi
				Galant, proving the
				vehicle was illegally
				clean plugged by
				Respondent's employee.
	4/10/2015	2004 Nissan Titan	YP936708C	eVIN transmitted was
	1123 - 1126 hours	VIN		for 2007 Toyota Camry
		1N6AA06A04N587551		not a 2004 Nissan Titan,
				proving the vehicle was
				illegally clean plugged
				by Respondent's
				employee.

1	4/10/2015	2001 Chevrolet Camaro	YP936711C	eVIN transmitted was
2	1553 - 1557 hours	Z28		for 2005 Ford Econoline
3		4RZP891		not a 2001 Chevrolet
4				Camaro Z28, proving
5				the vehicle was illegally
6				clean plugged by
7				Respondent's employee.
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10	4/10/2015	2006 Mazda	YP936712C	eVIN transmitted was
11	1558 - 1602 hours	MazdaSpeed 6		for 2005 Ford Econoline
12		5TFT568		not a 2006 Mazda
13				MazdaSpeed 6, proving
14				the vehicle was illegally
15				clean plugged by
16				Respondent's employee.
17				
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20	4/11/2015	2000 Chevrolet	YP936716C	eVIN transmitted was
21	0835 - 0842 hours	Silverado		for 2007 Chevrolet
22		6X88873		Colorado not a 2000
23				Chevrolet Silverado,
24				proving the vehicle was
25				illegally clean plugged
26				by Respondent's
27				employee.
28				
	4/11/2015	2008 Mitsubishi Lancer	YP936718C	eVIN transmitted was
	0937 - 0940 hours	AWDFISH		for 2008 Chevrolet
				Cobalt not a 2008
				Mitsubishi Lancer ,
				proving the vehicle was
				illegally clean plugged
				by Respondent's
				employee.
	4/11/2015	2006 Acura 3.2TL	YP936719C	eVIN transmitted was
	0940 - 0944 hours	VIN		for 2008 Chevrolet
		19UUA66296A042603		Cobalt not a 2006 Acura
				3.2TL, proving the
				vehicle was illegally
				clean plugged by
				Respondent's employee.

1	4/11/2015	2003 Lincoln Navigator	YP936720C	eVIN transmitted was
2	0944 - 0948 hours	4XUG504		for 2008 Chevrolet
3				Cobalt not a 2003
4				Lincoln Navigator,
5				proving the vehicle was
6				illegally clean plugged
7				by Respondent's
8				employee.
9				
10	4/11/2015	2005 Ford F150	YP936722C	eVIN transmitted was
11	1536 - 1539 hours	8E29943		for 2006 Honda Accord
12				not a 2005 Ford F150,
13				proving the vehicle was
14				illegally clean plugged
15				by Respondent's
16				employee.
17				
18	4/11/2015	2002 Jeep Wrangler	YP936723C	eVIN transmitted was
19	1540 - 1544 hours	Z985032		for 2006 Honda Accord
20				not a 2002 Jeep
21				Wrangler, proving the
22				vehicle was illegally
23				clean plugged by
24				Respondent's employee.
25				
26	4/12/2015	2001 Cadillac Deville	YP936726C	eVIN transmitted was
27	1016 - 1023 hours	6HLW762		for 2006 Honda Accord
28				not a 2001 Cadillac
				Deville, proving the
				vehicle was illegally
				clean plugged by
				Respondent's employee.
	4/13/2015	2006 Mazda	YP936728C	eVIN transmitted was
	1111 - 1115 hours	MazdaSpeed6		for 2004 Dodge
		5TUV558		Durango not a 2006
				Mazda MazdaSpeed6,
				proving the vehicle was
				illegally clean plugged
				by Respondent's
				employee.

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4/13/2015 1115 - 1119 hours	2007 Chevrolet Silverado C1500 CKNURHM	YP936729C	eVIN transmitted was for 2004 Dodge Durango not a 2007 Chevrolet Silverado C1500, proving the vehicle was illegally clean plugged by Respondent's employee.
4/13/2015 1145 - 1148 hours	2001 Ford Explorer 7B28457	YP936731C	eVIN transmitted was for 2003 Ford Ranger not a 2001 Ford Explorer, proving the vehicle was illegally clean plugged by Respondent's employee.
4/14/2015 0859 - 0904 hours	2007 Cadillac C/T 6JLT753	YP936733C	eVIN transmitted was for 2007 Mitsubishi Galant not a 2007 Cadillac C/T, proving the vehicle was illegally clean plugged by Respondent's employee.
4/14/2015 0937 - 0941 hours	2004 Chevrolet Venture 6NQW900	YP936736C	eVIN transmitted was for 2004 Ford Taurus not a 2004 Chevrolet Venture, proving the vehicle was illegally clean plugged by Respondent's employee.
4/14/2015 0941 - 0945 hours	2003 Toyota RAV4 5BVC154	YP936737C	eVIN transmitted was for 2004 Ford Taurus not a 2003 Toyota RAV4, proving the vehicle was illegally clean plugged by Respondent's employee.
4/14/2015 1121 - 1129 hours	2000 Oldsmobile Alero 4KGM034	YP936738C	eVIN transmitted was for 2006 Dodge Magnum not a 2000 Oldsmobile Alero, proving the vehicle was illegally clean plugged by Respondent's employee.

1	4/14/2015	2004 Ford F250 Super Duty	YP936739C	eVIN transmitted was for 2006 Dodge Magnum not a 2004 Ford F250 Super Duty, proving the vehicle was illegally clean plugged by Respondent's employee.
2	1130 - 1134 hours	VIN 1FTNW21P34ED06761		
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4				
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6	4/14/2015	2001 Mitsubishi Mirage	YP936740C	eVIN transmitted was for 2006 Dodge Magnum not a 2001 Mitsubishi Mirage, proving the vehicle was illegally clean plugged by Respondent's employee.
7	1134 - 1139 hours	5AIR337		
8				
9				
10				
11	4/14/2015	2002 Cadillac Escalade	YP936741C	eVIN transmitted was for 2006 Dodge Magnum not a 2002 Cadillac Escalade, proving the vehicle was illegally clean plugged by Respondent's employee.
12	1140 - 1144 hours	VIN 1GYEC63T22R135110		
13				
14				
15				
16	4/14/2015	2006 Pontiac G6	YP936744C	eVIN transmitted was for 2009 Chevrolet Tahoe not a 2006 Pontiac G6, proving the vehicle was illegally clean plugged by Respondent's employee.
17	1316 - 1324 hours	7CQE238		
18				
19				
20				
21	4/14/2015	2005 Ford F350 Super Duty	YP936745C	eVIN transmitted was for 2005 Kia Sedona not a 2005 Ford F350 Super Duty, proving the vehicle was illegally clean plugged by Respondent's employee.
22	1701 - 1704 hours	7U57026		
23				
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1	4/16/2015	2005 Infinity G35	YR058859C	eVIN transmitted was
2	1151 - 1156 hours	7CHW868		for 2007 GMC Acadia
3				not a 2005 Infinity G35,
4				proving the vehicle was
5				illegally clean plugged
6				by Respondent's
7				employee.
8				
9				
10	4/16/2015	2002 BMW 530i	YR058860C	eVIN transmitted was
11	1421 - 1429 hours	7GZF662		for 2010 Nissan not a
12				2002 BMW 530i,
13				proving the vehicle was
14				illegally clean plugged
15				by Respondent's
16				employee.
17				
18				
19	4/16/2015	2002 Volkswagen	YR058861C	eVIN transmitted was
20	1430 - 1434 hours	Passat		for 2010 Nissan not a
21		4WDS179		2002 Volkswagen
22				Passat, proving the
23				vehicle was illegally
24				clean plugged by
25				Respondent's employee.
26				
27				
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	4/18/2015	2002 Honda Civic	YR058871C	eVIN transmitted was
	0858 - 0920 hours	6XZW356		for 2012 Honda not a
				2002 Honda Civic,
				proving the vehicle was
				illegally clean plugged
				by Respondent's
				employee.
	4/18/2015	2004 Nissan Maxima	YR058875C	eVIN transmitted was
	1111 - 1115 hours	5PVJ047		for 2011 Toyota not a
				2004 Nissan Maxima,
				proving the vehicle was
				illegally clean plugged
				by Respondent's
				employee.
	4/20/2015	2004 Dodge Neon	YR058880C	eVIN transmitted was
	0925 - 0928 hours	6NUM600		for 2005 Ford F150 not
				a 2004 Dodge Neon,
				proving the vehicle was
				illegally clean plugged
				by Respondent's
				employee.

1	4/20/2015	2001 Chevrolet Cavalier	YR058883C	eVIN transmitted was
2	1547 - 1556 hours	4WPP775		for 2011 Toyota not a
3				2001 Chevrolet
4				Cavalier, proving the
5				vehicle was illegally
6				clean plugged by
7				Respondent's employee.
8				
9	4/20/2015	2001 Ford F150	YR058884C	eVIN transmitted was
10	1557 - 1602 hours	7D62179		for 2011 Toyota not a
11				2001 Ford F150,
12				proving the vehicle was
13				illegally clean plugged
14				by Respondent's
15				employee.
16				
17	4/21/2015	2005 BMW 545i	YR058886C	eVIN transmitted was
18	1055 - 1100 hours	6GJS378		for 2006 Chrysler PT
19				Cruiser not a 2005
20				BMW 545i, proving the
21				vehicle was illegally
22				clean plugged by
23				Respondent's employee.
24				
25	4/21/2015	2006 Subaru Impreza	YR058887C	eVIN transmitted was
26	1103 - 1107 hours	WRX		for 2006 Chrysler PT
27		5VFJ610		Cruiser not a 2006
28				Subaru Impreza WRX,
				proving the vehicle was
				illegally clean plugged
				by Respondent's
				employee.
	4/21/2015	2002 Honda Civic	YR058888C	eVIN transmitted was
	1108 - 1112 hours	4XEW115		for 2006 Chrysler PT
				Cruiser not a 2002
				Honda Civic, proving
				the vehicle was illegally
				clean plugged by
				Respondent's employee.
	05/05/2015	2000 Toyota Avalon	PS037685C	eVIN transmitted was
	1524-1530 hours	4KXE654		for 2007 Volvo S40 not
				a 2000 Toyota Avalon,
				proving the vehicle was
				illegally clean plugged
				by Respondent's
				employee.

05/05/2015 1531-1534 hours	2002 Mitsubishi Lancer 7BUV190	PS037686C	eVIN transmitted was for 2007 Volvo S40 not a 2002 Mitsubishi Lancer, proving the vehicle was illegally clean plugged by Respondent's employee.
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* Test times are in military time.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

21. Respondent has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(1), in that he and/or his employee made statements which they knew or which by exercise of reasonable care should have known were untrue or misleading by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, those vehicles had not been so inspected. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 19 and 20, inclusive, as though set forth fully herein.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

22. Respondent has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(4), in that he and/or his employee committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Tables 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 19 and 20, inclusive, as though set forth fully herein.

THIRD CAUSE FOR DISCIPLINE

(Material Violation of Automotive Repair Act)

23. Respondent has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(6), in that he and/or his employee failed in a "material respect to comply with the

1 provisions of this chapter or regulations adopted pursuant to it" by issuing electronic certificates
2 of compliance for the vehicles set forth in Table 1, above, without performing bona fide
3 inspections of the emission control devices and systems on those vehicles, thereby depriving the
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection
5 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
6 paragraphs 19 and 20, inclusive, as though set forth fully herein.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Violation of the Motor Vehicle Inspection Program)**

9 24. Respondent has subjected his station license to discipline under HSC section 44072.2,
10 subdivision (a), in that, with respect to the vehicles set forth in Table 1, above, Respondent
11 violated the following sections of the HSC:

12 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
13 performed on those vehicles in accordance with procedures prescribed by the department.

14 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
15 compliance without properly testing and inspecting the vehicles to determine if they were in
16 compliance with section 44012 of the HSC.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

19 25. Respondent has subjected his station license to discipline under HSC section 44072.2,
20 subdivision (c), in that, with respect to the vehicles set forth in Table 1, above, Respondent
21 violated the following sections of title 16 of the CCR:

22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
23 electronic certificates of compliance without performing bona fide inspections of the emission
24 control devices and systems on those vehicles as required by HSC section 44012.

25 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
26 compliance even though those vehicles had not been inspected in accordance with section
27 3340.42 of the HSC.

28 ///

1 c. Section 3340.42: Respondent failed to conduct the required smog tests and
2 inspections on those vehicles in accordance with the Bureau's specifications.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud or Deceit)**

5 26. Respondent has subjected his station license to discipline under HSC section 44072.2,
6 subdivision (d), in that, with respect to the vehicles set forth in Table 1, above, Respondent
7 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
8 electronic certificates of compliance for those vehicles without performing bona fide inspections
9 of the emission control devices and systems on those vehicles, thereby depriving the People of the
10 State of California of the protection afforded by the Motor Vehicle Inspection Program.

11 **PRAAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Director of Consumer Affairs issue a decision:

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 260432 to Andrew W. Labib, dba AW Smog Center;

16 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
17 260432 to Andrew W. Labib, dba AW Smog Center;

18 3. Revoking or suspending any and all licenses issued under Articles 5 and 6 of the
19 Automotive Repair Act in the name of Andrew W. Labib pursuant to section 9889.9 of the
20 Business and Professions Code;

21 4. Revoking or suspending any and all licenses issued under the Motor Vehicle
22 Inspection Program in the name of Andrew W. Labib pursuant to section 44072.8 of the Health
23 and Safety Code;

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1 5. Ordering Andrew W. Labib to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 6. Taking such other and further action as deemed necessary and proper.

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6 DATED:

June 6, 2016

Patrick Dorais

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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