

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

In the Matter of the Accusation Against:

**AMIR SAIFULLAH SHAH, doing business as
GOLDEN STAR SMOG,**

Automotive Repair Dealer Registration No.
ARD 266219
Smog Check Test Only Station License No.
TC 266219

and

YUSUF RAYHAT KHALID HUSSAIN,

Smog Check Inspector License No.
EO 634973

Respondents.

Case No. 79/16-7674

OAH No. 2017041237

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.

This Decision shall become effective December 29, 2017

DATED: _____

11/17/17



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 Against:

AMIR SAIFULLAH SHAH,¹ doing business
as GOLDEN STAR SMOG,

Automotive Repair Dealer Registration
No. ARD266219
Smog Check Test Only Station License
No. TC266219

and

YUSUF RAYHAT KHALID HUSSAIN,
Smog Check Inspector License
No. EO634973

Respondents.

Case No. 79/16-7674

OAH No. 2017041237

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on August 22, 2017, in Oakland, California.

Deputy Attorney General Justin R. Surber represented petitioner Patrick Dorais, the Chief of the Bureau of Automotive Repair.

Attorney at Law William D. Ferreira represented respondent Amir Saifullah Shah, who was present at the hearing.

No one appeared for respondent Yusuf Rayhat Khalid Hussain.

The matter was submitted for decision on August 22, 2017.

¹ The accusation in this matter gives this respondent's surname as "Shan." The parties stipulated at the hearing that his correct surname is "Shah."

FACTUAL FINDINGS

1. On August 11, 2011, the Bureau of Automotive Repair registered respondent Amir Saifullah Shah, doing business as Golden Star Smog, as an automotive repair dealer (Registration No. ARD266219). On August 25, 2011, the Bureau also licensed respondent Shah, again doing business as Golden Star Smog, as a smog check test only station (License No. TC266219). This registration and license will expire August 31, 2017, unless renewed.

2. The Bureau certified Golden Star Smog as a STAR Station, effective January 17, 2013. This STAR Station certification will remain active as long as the automotive repair dealer registration and smog check test only station license remain active, unless the Bureau earlier invalidates the STAR Station certification.

3. Respondent Shah also holds a license as a smog check inspector (License No. EO154238), and has held this or a similar license since 2007. Respondent Shah's smog check inspector license will expire March 31, 2019.

4. On December 30, 2016, acting in his official capacity as Chief of the Bureau, complainant Patrick Dorais served the accusation initiating this matter. The accusation seeks discipline against Shah's automotive repair dealer registration and smog check test only station license, against Shah's smog check inspector license, and against a smog check inspector license allegedly held by respondent Yusuf Rayhat Khalid Hussain; it seeks this discipline on the ground that Hussain, while working for Shah at Golden Star Smog, caused Golden Star Smog to issue certificates of compliance for smog inspections that Hussain had not actually performed. Respondent Shah requested a hearing.

5. Respondent Hussain did not request a hearing on the accusation. The Bureau has resolved the accusation with respect to him in a separate decision and order.

Basis for Discipline

6. Licensed smog check stations perform Bureau-regulated smog inspections in part using computerized devices that deliver test results directly to the Bureau. The Bureau's inspection and audit protocols permit the Bureau to verify whether each computerized inspection result the Bureau receives really is from the vehicle that the smog inspector has purported to inspect.

7. Between March 26 and April 29, 2016, Hussain caused Golden Star Smog to issue certificates of compliance for 10 vehicles for which Hussain had substituted different vehicles during the computerized portion of the smog inspection.

Additional Evidence

8. Shah has owned Golden Star Smog since 2011. Shah also has owned another smog check station, Pittsburg Smog, for about 10 years.

9. Between Pittsburg Smog and Golden Star Smog, Shah has employed about seven smog check inspectors over the 10 years he has been in the smog inspection business. Aside from the accusation in this matter, the Bureau has never threatened or imposed discipline against Shah or any of the inspectors working for him at these two businesses.

10. During March, April, and May 2016, Shah employed Hussain to perform smog inspections at Golden Star Smog only on Fridays and Saturdays. Shah employed Hussain because Shah had other commitments on Fridays and Saturdays and could not personally be present at the business. Shah was not present during any of the 10 inspections at issue in this matter.

11. Shah stopped asking Hussain to work on Fridays and Saturdays in part because Shah grew to mistrust Hussain.

12. At the time of the hearing, Shah was the only smog check inspector conducting smog inspections at Golden Star Smog.

13. The evidence did not establish that the Bureau has received any additional test results from Golden Star Smog suggesting smog inspection fraud since April 29, 2016.

14. The Bureau notified Shah in November 2016 that it suspected Hussain to have caused Golden Star Smog to issue certificates of compliance misrepresenting the vehicles Hussain had inspected. The evidence did not establish that Shah had any reason to know before receiving this notice that Hussain had reported false inspection results to the Bureau.

15. Before learning about Hussain's misrepresentations, Shah reviewed his employees' inspection work regularly by matching each day's invoices against the tests the smog inspection devices reported as having been performed that day.

16. After learning about Hussain's misrepresentations, Shah installed a security camera at Golden Star Smog that is capable of recording an image of each vehicle that enters the inspection bay. If he employs any other inspectors at Golden Star Smog, Shah's intention is to use the camera to audit their work, by comparing a sample of invoices against the recordings to confirm that the vehicle listed on each invoice actually is the vehicle that was in the inspection bay for that inspection.

17. Shah recognizes that visual confirmation from the security camera cannot prevent or reveal inspection errors that do not involve physical substitution of one vehicle for another. He also has prepared written guidelines for his smog inspection employees reminding them of their obligation to conduct inspections without misrepresentation and cautioning them that violation of Bureau smog inspection regulations will be grounds for immediate termination of their employment. His inspectors at Pittsburg Smog have signed copies of these guidelines to acknowledge their commitment to following these rules, and Shah intends to have any new inspectors at Golden Star Smog sign them as well.

18. For several years, Shah coached and managed a minor-league professional football team. Many of the players were high school graduates who had attended little or no college, and Shah used his position as an opportunity to mentor them as they assumed adult responsibilities and found employment.

19. Shah provided numerous reference letters from writers who know him through business, through community service, and through religious activities. All of these letters praised Shah's honesty, his personal integrity, and his commitment to community service.

20. Shah's testimony in this matter was wholly credible. He understands his obligations as a smog check inspector and as the proprietor of a licensed smog check test only station; he intends to satisfy those obligations; and he has taken reasonable steps to ensure that his employees do likewise.

Costs

21. The Bureau has incurred \$3,470 in costs for legal services provided to complainant by the Department of Justice in this matter. Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(2). These costs are reasonable.

22. Complainant also provided a cost certification stating that Bureau investigative staff costs in connection with this matter totaled \$2,943.52 for fiscal years "15/16" and "16/17." This certification states total hours and hourly rates for each fiscal year, but does not "describe the general tasks performed" or break down "the time spent on each task." For these reasons, this certification does not satisfy the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(1), and is inadequate evidence of the Bureau's investigative costs.

LEGAL CONCLUSIONS

1. The Bureau may discipline the automotive repair dealer registration Shah holds for Golden Star Smog upon proof that Shah or any Golden Star Smog employee has made any untrue or misleading statement in the course of business. (Bus. & Prof. Code, § 9884.7,² subd. (a)(1).) The matters stated in Finding 7 constitute cause for discipline under this statute.

2. The Bureau may discipline the automotive repair dealer registration Shah holds for Golden Star Smog upon proof that Shah or any Golden Star Smog employee has committed fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) The matters stated in Finding 7 constitute cause for discipline under this statute.

² Although the accusation alleged cause for discipline as well under Business and Professions Code section 494, complainant disavowed reliance on this statute at the hearing.

3. Upon proof of a course of repeated and willful violations of the laws governing automotive repair dealers, the Bureau may discipline any other automotive repair dealer registrations Shah holds. (Bus. & Prof. Code, § 9884.7, subd. (c).) In light of the matters stated in Findings 8, 9, and 13, the matters stated in Finding 7 do not constitute cause for discipline against any automotive repair dealer registrations Shah holds other than the registration for Golden Star Smog.

4. The Bureau may discipline the smog check test only station license Shah holds for Golden Star Smog upon proof that Shah, acting through Golden Star Smog, has violated any of the laws and regulations governing the smog check program. (Health & Saf. Code, § 44072.2, subds. (a), (c).) These laws and regulations require, in pertinent part, that Golden Star Smog issue certificates of compliance only to vehicles that its inspectors have tested in accordance with the Bureau's testing specifications. (Health & Saf. Code, § 44012; Cal. Code Regs., tit. 16., §§ 3340.24, subd. (c), 3340.42.) The matters stated in Finding 7 constitute cause for discipline under these statutes and regulations.

5. The Bureau may discipline the smog check test only station license Shah holds for Golden Star Smog upon proof that Shah, acting through Golden Star Smog, has committed a dishonest or fraudulent act in the smog check program. (Health & Saf. Code, § 44072.2, subd. (d).) In light of the matters stated in Findings 10, 13, and 14, the matters stated in Finding 7 do not constitute cause for discipline under this statute.

6. If the Bureau disciplines one license Shah holds under the smog check program, it may (but need not) discipline others. (Health & Saf. Code, § 44072.8.) Although the matters stated in Legal Conclusion 5 permit the Bureau to discipline Shah's smog check inspector license, or any other smog check station licenses he may hold, such discipline is unwarranted in light of the matters stated in Findings 8 through 14.

7. The Bureau "shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles." (Health & Saf. Code, § 44072.10, subd. (c).) The evidence, in particular as stated in Findings 10, 13, and 14, did not establish that Shah participated in or condoned fraudulent inspections at Golden Star Smog, or even knew about them in time to prevent Hussain from performing them. Instead, as stated in Findings 8 through 11, Shah has worked in the smog check program for ten years, and unwittingly employed one apparently dishonest inspector for about three months. Complainant did not establish that revocation of Shah's smog check test only station license for Golden Star Smog is statutorily required, or that it is necessary to protect the smog check program's integrity.

8. The Bureau has adopted disciplinary guidelines. (Cal. Code Regs., tit. 16, § 3395.4.) These guidelines call for the Bureau to consider mitigation evidence, including "[a]bsence of prior disciplinary action," "mitigating and corrective steps to minimize recurrence," and "substantial measures to correct [the licensee's] business practices and/or business operations so as to minimize the likelihood of recurrence of the violation." (Guidelines for Disciplinary Orders and Terms of Probation, rev. March 2016, at pp. 2-3.) The matters

stated in Findings 8 through 17 are strong evidence mitigating the matters stated in Finding 7; furthermore, the matters stated in Findings 18 through 20 show that Shah is likely to comply with any probationary terms. The minimum term of probation, two years, is appropriate here.

9. The optional probation conditions listed in the Bureau's disciplinary guidelines that might apply to Shah's automotive repair dealer registration or smog check test only station license are optional terms 6 and 7. Optional term 6 would end Golden Star Smog's status as a STAR Station, but complainant did not seek this remedy in the accusation and did not give notice to Shah as required under the STAR program regulations. (See Cal. Code Regs., tit. 16, § 3392.6.1.) Optional term 7, limiting Shah's ability to delegate supervision of his smog inspectors to others, is appropriate here.

10. A licensee found to have committed a violation of the statutes and regulations governing automotive repair may be required to pay the Board the reasonable costs of its investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3.) As set forth in Findings 21 and 22, the total reasonable costs proven in this matter were \$3,470.

11. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that the board does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id.* at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid.*) Lastly, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid.*)

12. All these matters have been considered. In this matter, the evidence at hearing exonerated respondent Shah of the most serious charges against him, and established his suitability for disciplinary measures short of license revocation. An order directing respondent to reimburse the Board \$1,750, for approximately half its investigation and prosecution costs, is reasonable.

ORDER

1. Automotive repair dealer registration number ARD266219, held by respondent Shah doing business as Golden Star Smog, is revoked. The revocation is stayed, however, and respondent Shah is placed on probation for two years on the conditions stated in paragraph 3, below.

2. Smog check test only station license number TC266219, held by respondent Shah doing business as Golden Star Smog, is revoked. The revocation is stayed, however, and respondent Shah is placed on probation for two years on the conditions stated in paragraph 3, below.

3. During the two years while automotive repair dealer registration number ARD266219 and smog check test only station license number TC266219 are on probation, the following conditions shall apply:

A. Obey All Laws

During the period of probation, respondent Shah shall comply with all federal and state statutes, regulations, and rules governing all Bureau registrations and licenses he holds.

B. Quarterly Reporting

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

C. Report Financial Interests

Respondent Shah shall, within 30 days after the effective date of the decision and within 30 days after the date of any request by the Bureau during the period of probation, report any financial interest which he or any business partners, officers, or co-owners may have in any other business required to be registered under Business and Professions Code section 9884.6.

D. Access to Examine Vehicles and Records

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

E. Tolling of Probation

If, during probation, respondent Shah leaves the jurisdiction of California, to reside or do business elsewhere, or ceases to do business in the jurisdiction of California, respondent Shah shall notify the Bureau in writing within 10 days

of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All terms and conditions of probation other than cost reimbursement requirements and the requirement that respondent Shah obey all laws shall be held in abeyance during any period of time of 30 days or longer in which respondent Shah is not residing or engaging in business within the jurisdiction of California. All terms and conditions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more during which respondent Shah is not residing or engaging in business within the jurisdiction of California shall not apply to reduce this probationary period. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

F. Violation of Probation

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

G. Maintain Valid License

Respondent Shah shall, at all times while on probation, maintain current and active registration and license with the Bureau, including during any period while probation is tolled. If respondent Shah's registration or license expires during the term of probation, by operation of law or otherwise, then upon renewal respondent Shah's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain current and active registration or license during the period of probation shall also constitute a violation of probation.

H. Cost Recovery

Respondent Shah shall pay the Bureau \$1,750 for the reasonable costs of the investigation and enforcement of Bureau Case Number 79/16-7674.

Respondent Shah shall complete such payment six months before the end of the term of probation, in a lump sum or in a payment plan approved by the Bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six months before the end of the term of probation. Respondent Shah 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 Number 79/16-7674. Any order for payment of cost recovery, including any payment schedule, shall remain in effect whether or not probation is tolled. Probation shall not end until full cost recovery payment has been made. The Bureau reserves the right to pursue any lawful measures to collect costs ordered and past due, in addition to taking action based on the violation of probation.

I. Completion of Probation

Upon successful completion of probation, respondent Shah's automotive repair dealer registration and smog check test only station license will be fully restored or issued without restriction, if respondent Shah meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

J. License Surrender

Following the effective date of this decision and order, if respondent Shah ceases business operations or becomes otherwise unable to satisfy the terms and conditions of probation, respondent Shah may request that the stay be vacated. Any such request shall be made in writing to the Bureau. The Director and the Bureau Chief reserve the right to evaluate any such request and to exercise discretion whether to grant the request or to take any other action that is appropriate and reasonable under the circumstances. Upon formal granting of a request to vacate the stay, the Director will vacate the stay order and carry out the disciplinary order.

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

K. Supervision Requirements

Respondent Shah shall not delegate his supervisory duties, as they relate to the business activities relevant to the probationary license, to another person during the period of probation. Any persons employed by respondent Shah to carry out business activities at Golden Star Smog shall be directly supervised by Shah. In the event that a bona fide medical condition arises during the period of probation, which temporarily prevents respondent Shah from

exercising direct supervision over Golden Star Smog's employees, notice and medical substantiation of the condition shall be submitted to the Bureau within 10 days of medical affirmation of the condition.

4. Any other automotive repair dealer registrations and smog check station licenses held by Shah shall continue unmodified.

5. Smog check inspector license number EO154238 held by respondent Shah shall continue unmodified.

6. No disposition is made in this decision and order of the accusation with respect to respondent Yusuf Rayhat Khalid Hussain.

DATED: August 30, 2017

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

12 **AMIR SAIFULLAH SHAN**
DBA GOLDEN STAR SMOG
2484 Olivera Road
Concord, CA 94520

13 **Mailing Address:**
14 **2505 Bugle Way**
Antioch, CA 94531

15 **Automotive Repair Dealer No. ARD 266219**
16 **Smog Check Test Only Station License No. 266219**

17 **YUSUF RAYHAT KHALID HUSSAIN**
18 **115 Frisbee St.**
Vallejo, CA 94590

19 **Smog Check Inspector (EO) license No. EO634973**

20 Respondents.

Case Number: *79/16-7674*
ACCUSATION
Smog Check

21 Complainant alleges:

22 **PARTIES**

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

25 **Automotive Repair Dealer Registration**

26 2. On or about August 11, 2011, the Bureau issued Automotive Repair Dealer
27 Registration Number ARD 266219 ("Registration") to Amir Saifullah Shan ("Respondent Shan")
28

1 doing business as Golden Star Smog. The registration was in full force and effect at all times
2 relevant to the charges brought herein and will expire on August 31, 2017, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about August 25, 2011, the Bureau issued Smog Check Station License
5 Number TC 266219 (“smog station license”) to Respondent Shan. The smog station license was
6 in full force and effect at all times relevant to the charges brought herein and will expire on
7 August 31, 2017, unless renewed.

8 **Smog Check Inspector License**

9 4. On or about November 26, 2012, the Director issued Smog Check Inspector License
10 EO 634973 to Yusaf Rayhat Khalid Hussain (Respondent Hussain). Respondent Hussain’s Smog
11 Check Inspector License will expire on December 31, 2016, unless renewed.

12 **JURISDICTION**

13 5. This Accusation is brought before the Director of the Department of Consumer
14 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

15 **STATUTORY AND REGULATORY PROVISIONS**

16 6. Section 9884.7 of the Business and Professions Code (“Code”) states, in pertinent
17 part:

18 (a) The director, where the automotive repair dealer cannot show there was a bona fide
19 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
20 dealer for any of the following acts or omissions related to the conduct of the business of the
21 automotive repair dealer, which are done by the automotive repair dealer or any automotive
22 technician, employee, partner, officer, or member of the automotive repair dealer.

23 (1) Making or authorizing in any manner or by any means whatever any statement written
24 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
25 care should be known, to be untrue or misleading.

26 . . .

27 (4) Any other conduct that constitutes fraud.

28 . . .

1 (6) Failure in any material respect to comply with the provisions of this chapter or
2 regulations adopted pursuant to it.

3 ...

4 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
5 probation the registration for all places of business operated in this state by an automotive repair
6 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
7 and willful violations of this chapter, or regulations adopted pursuant to it.

8 7. Code section **9884.13** provides, in pertinent part, that the expiration of a valid
9 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
10 proceeding against an automotive repair dealer or to render a decision invalidating a registration
11 temporarily or permanently.

12 8. Section **44002** of the Health and Safety Code provides, in pertinent part, that the
13 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
14 the Motor Vehicle Inspection Program.

15 9. Section **44012** of the Health and Safety Code requires that tests at smog check
16 stations be performed in accordance with procedures prescribed by the department.

17 10. Section **44059** of the Health and Safety Code states, in pertinent part:

18 "The willful making of any false statement or entry with regard to a material matter in any
19 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
20 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
21 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

22 11. Section **44072.2** of the Health and Safety Code states, in pertinent part:

23 The director may suspend, revoke, or take other disciplinary action against a license as
24 provided in this article if the licensee, or any partner, officer, or director thereof, does any of the
25 following:

26 (a) Violates any section of this chapter and the regulations adopted pursuant to it, which
27 related to the licensed activities.

28 ...

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

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

3 . . .

4 (h) Violates or attempts to violate the provisions of this chapter relating to the particular
5 activity for which he or she is licensed.

6 12. Section **44072.6** of the Health and Safety Code provides, in pertinent part, that the
7 expiration or suspension of a license by operation of law, or by order or decision of the Director
8 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
9 the Director of jurisdiction to proceed with disciplinary action.

10 13. Section **44072.8** of the Health and Safety Code states:

11 When a license has been revoked or suspended following a hearing under this article, any
12 additional license issued under this chapter in the name of the licensee may be likewise revoked
13 or suspended by the director.

14 14. California Code of Regulations, title 16, section **3340.24**, states:

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

18 15. California Code of Regulations, title 16, section **3340.30**, states, in pertinent part:

19 A licensed smog check inspector and/or repair technician shall comply with the following
20 requirements at all times while licensed:

21 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
22 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
23 article.

24 . . .

25 16. California Code of Regulations, title 16, section **3340.41(c)**, states:

26 “No person shall enter into the emissions inspection system any vehicle identification
27 information or emission control system identification data for any vehicle other than the one
28

1 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
2 information about the vehicle being tested.”

3 17. California Code of Regulations, title 16, section **3340.42**, states, in pertinent part that
4 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
5 section 3340.45.”

6 18. California Code of Regulations, title 16, section **3340.45**, states:

7 (a) All Smog Check inspections shall be performed in accordance with requirements and
8 procedures prescribed in the following:

9 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
10 incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

11 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
12 manual shall become effective on or after January 1, 2013.

13 FACTUAL SUMMARY

14 19. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
15 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission
16 Inspection System (EIS) for the smog testing of 2000 model year and newer gas powered and
17 hybrid vehicles.

18 20. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a
19 computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a
20 vehicle's On Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR
21 OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the
22 vehicle. The bar code scanner is used to input technician information, the vehicle identification
23 number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection
24 Reports.

25 21. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN,
26 which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module
27 (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the
28

1 PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the
2 number of specific data values each PCM uses related to emissions controls.

3 22. As part of the BAR-OIS smog inspections, the technician also performs a visual and
4 functional test on the vehicle being inspected. The visual inspection of the emission control
5 components verifies the required emission control devices are present and properly connected and
6 a functional test is performed of the malfunction indicator light (MIL). The BAR-OIS software
7 makes the determination whether or not the vehicle passes the inspection based on the results of
8 the OBD, visual and functional tests. If the vehicle passes the inspection a certificate of
9 compliance is issued. The information from the smog inspection is then transmitted to the
10 Vehicle Information Data (VID).

11 23. The Bureau can access the VID to view test data on smog check inspections
12 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
13 particular vehicle which has been tested.

14 24. The Bureau has become aware of several methods used by Smog Check stations and
15 Smog Check technicians to issue improper/fraudulent smog certificates of compliance. One
16 method is known as clean plugging. Clean plugging involves using another vehicle's properly
17 functioning OBD II system, or another source, to generate passing diagnostic readings for the
18 purpose of issuing fraudulent smog Certificates of Compliance to vehicles that are not in smog
19 compliance and/or are not present for testing.

20 25. The Bureau initiated an investigation of Respondent Shan's smog station, Golden Star
21 Smog. Beginning on or about May 4, 2016 and continuing until about May 17, 2016,
22 Respondents¹ were found to have performed ten fraudulent smog inspections using clean-
23 plugging methods. Clean-plugging is the practice of testing one OBD II system (a system that
24 would pass the smog inspection), for the purpose of fraudulently issuing a smog certificate of
25 compliance to another vehicle that would not pass the smog inspection and/or is not present for
26

27
28 ¹ Respondent Hussain performed the smog tests on behalf of Respondent Shan.

1 testing. The vehicle receiving the certificate of compliance is not actually tested during the smog
2 inspection.

3 26. A Bureau representative reviewed data for vehicles inspected by Respondent Hussain
4 and certified by Respondent Shan. The data revealed that the ten vehicles that were purportedly
5 tested by Respondents were not and could not have been connected to the DAD when they were
6 being certified because the OBD-II data purportedly transmitted by those vehicles could not have
7 actually been transmitted by those vehicles.

8 27. Respondents clean plugged and issued fraudulent certificates of compliance to the
9 following ten vehicles:

10
11 a) Clean Plug #1- 2007 Chevrolet Colorado

Certificate #	eVIN	Protocol	PID count
ZB020775C			
Fraudulent Passing Inspection (3/26/2016)	1FAHP60A22Y115994	JPWM1850	21
Expected OBDII Value	1GCCS199978188317	JVPW	19

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18 b) Clean Plug #2- 2006 Toyota Highlander

Certificate #	eVIN	Protocol	PID count
ZB370363C			
Fraudulent Passing Inspection (4/1/2016)	2B3KA53H68H128451	ICAN11bt500	43
Expected OBDII Value	JTEGD21A360143342	1914	17

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c) Clean Plug #3- 2000 Mazda MPV Wagon

Certificate #	eVIN	Protocol	PID count
ZB370373C			
Fraudulent Passing Inspection (4/2/2016)	KL1TD56606B641101	KWPF8FE9	36
Expected OBDII Value	Not Reported	I914	20

d) Clean Plug #4- 2001 Toyota Sienna LE/XLE

Certificate #	eVIN	Protocol	PID count
ZB370374C			
Fraudulent Passing Inspection (4/2/2016)	KL1TD56606B641101	KWPF8FE9	36
Expected OBDII Value	Not Reported	I914	20

e) Clean Plug #5- 2001 Chevrolet Silverado C1500

Certificate #	eVIN	Protocol	PID count
ZB667304C			
Fraudulent Passing Inspection (4/8/2016)	1D7HU18N58J173893	ICAN11bt500	44
Expected OBDII Value	1GCEC19T81Z330790	JVPW	23

f) Clean Plug #6- 2002 Toyota Sienna LE/XLE

Certificate #	eVIN	Protocol	PID count
ZB667337C			
Fraudulent Passing Inspection (4/15/2016)	1J4NT2GA5AD520335	ICAN11bt500	36
Expected OBDII Value	Not Reported	I914	20

g) Clean Plug #7- 2000 Chevrolet Silverado C1500

Certificate #	eVIN	Protocol	PID count
ZB667341C			
Fraudulent Passing Inspection (4/15/2016)	2C3CCAEG3FH920892	ICAN11bt500	43
Expected OBDII Value	Not Reported	JVPW	22

h) Clean Plug #8- 2010 Chevrolet Cobalt LT

Certificate #	eVIN	Protocol	PID count
ZB962496C			
Fraudulent Passing Inspection (4/25/2016)	2GCEC19V941148966	JVPW1850	22
Expected OBDII Value	1G1AD5F5XA7175513	ICAN11bt5	38 7

i) Clean Plug #9- 2008 Dodge Charger CA

Certificate #	eVIN	Protocol	PID count
ZD245866C			
Fraudulent Passing Inspection (4/29/2016)	2HNYD18866H533086	I9140808	25
Expected OBDII Value	2B3KA43G08H206269	ICAN11bt5	43

j) Clean Plug #10- 2004 Chevrolet Tahoe K1500 CA

Certificate #	eVIN	Protocol	PID count
ZD245868C			
Fraudulent Passing Inspection (4/29/2016)	JTEES42A182076707	ICAN11bt500	46
Expected OBDII Value	1GNEK13T34R103188	JVPW	22

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements - Registration)**

3 28. Respondent Shan has subjected his registration to discipline under Code sections 494
4 and 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of
5 reasonable care he should have known were untrue or misleading, as set forth above in
6 paragraphs 25-27, above. Respondents fraudulently purported to test the 10 vehicles, and
7 certified that the 10 vehicles passed inspection and were in compliance with applicable laws and
8 regulations. In fact, Respondents conducted the inspections on those vehicles using clean-
9 plugging methods.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud - Registration)**

12 29. Respondent Shan has subjected his registration to discipline under Code sections 494
13 and 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set forth
14 above in paragraphs 25-27, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Violation of the Motor Vehicle Inspection Program – Smog Station License)**

17 30. Respondent Shan has subjected his station license to discipline under Health and
18 Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he violated sections
19 of that Code and applicable regulations, as set forth above in paragraphs 25-27, as follows:

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

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

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

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit – Smog Station License)**

3 31. Respondent Shan subjected his station license to discipline under Health and Safety
4 Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts involving
5 dishonesty, fraud or deceit, whereby another was injured by issuing electronic certificates of
6 compliance for vehicles without performing bona fide inspections of the emission control devices
7 and systems on the vehicles, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program, as set forth above in paragraphs
9 25-27, above.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Violations of the Motor Vehicle Inspection Program – Smog Check License)**

12 32. Respondent Hussain has subjected his Smog Check Inspector license to discipline
13 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
14 violated sections of that Code and applicable regulations, as set forth above in paragraphs 25-27,
15 as follows:

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

18 b. **Section 44059:** Respondent Hussain willfully made false entries for the electronic
19 certificates of compliance by certifying that those vehicles had been inspected as required when,
20 in fact, they had not.

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

25 d. **Section 3340.30, subdivision (a):** Respondent Hussain failed to inspect and test
26 these vehicles in accordance with Health and Safety Code section 44012 and California Code of
27 Regulations title 16, section 3340.42.
28

1 e. **Section 3340.41, subdivision (c):** Respondent Hussain entered vehicle identification
2 information for a vehicle other than the one being tested into the emissions inspection system.
3 Respondent Hussain knowingly entered false information about the vehicle being tested into the
4 emissions inspection system.

5 f. **Section 3340.42:** Respondent Hussain failed to conduct the required smog tests and
6 inspections on those vehicles in accordance with the Bureau's specifications.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit – Smog Check License)**

9 33. Respondent Hussain subjected his Smog Check Inspector License to discipline under
10 Health and Safety Code sections 44072.10 and 44072.2, subdivision (d), in that he committed acts
11 involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic
12 certificates of compliance for vehicles without performing bona fide inspections of the emission
13 control devices and systems on the vehicles, thereby depriving the People of the State of
14 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
15 in paragraphs 25-27.

16 **OTHER MATTERS**

17 34. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
18 or place on probation the registration for all places of business operated in this state by
19 Respondent Shan, upon a finding that Respondent Shan has, or is, engaged in a course of repeated
20 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

21 35. Pursuant to Health & Safety Code section 44072.8, if Respondent Shan's Station
22 License is revoked or suspended, any additional license issued under chapter 5 of the Motor
23 Vehicle Inspection Program in the name of said licensee may be likewise revoked or suspended
24 by the director.

25 36. Pursuant to Health & Safety Code section 44072.8, if Respondent Hussain's Smog
26 Check Inspector License is revoked or suspended, any additional license issued under chapter 5 of
27 the Motor Vehicle Inspection Program in the name of said licensee may be likewise revoked or
28 suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 266219 issued to Amir Saifullah Shan doing business as Golden Star Smog;
2. Revoking or suspending Smog Check Test Only Station License Number TC 266219 issued to Amir Saifullah Shan doing business as Golden Star Smog;
3. Revoking or suspending any additional Automotive Repair Dealer Registration, Smog Check Station License, Smog Check Inspector License, or Smog Check Repair Technician license, issued to Amir Saifullah Shan;
4. Ordering Amir Saifullah Shan to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
5. Revoking or suspending Smog Check Inspector License EO 634973 issued to Yusaf Rayhat Khalid Hussain;
6. Revoking or suspending any additional Smog Check Station License, Smog Check Inspector License, or Smog Check Repair Technician License, issued to Yusaf Rayhat Khalid Hussain;
7. Ordering Yusaf Rayhat Khalid Hussain to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
8. Taking such other and further action as deemed necessary and proper.

DATED: 12-27-16

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