

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

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

**BACK TO LIFE AUTO INC. and SCOTT
ANTHONY RUSKAUFF, PRES/TR/SEC**

Automotive Repair Dealer Registration
No. ARD 267644
Smog Check Test Only Station License
No. TC 267644

Respondent.

In the Matter of the Citation Against:

RYLAN JOHN KIRBY

Smog Check Inspector License No. 632331
Smog Check Repair Technician License No.
632332

Respondent.

Case No. 79/15-125

OAH No. 2015090934

Case No. M2015-0092


OAH No. 2016040831

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 July 21, 2017.

DATED: June 16, 2017



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

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PROPOSED DECISION

These consolidated matters were heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 26, 2016, and February 16, 2017, in Sacramento, California.

Karen Denvir, Deputy Attorney General, represented complainant, Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

William Ferreira, Attorney at Law, represented respondents Scott Anthony Ruskauff and Rylan John Kirby.

Evidence was received, the record was closed, and the matter was submitted for decision on February 16, 2017.

FACTUAL FINDINGS

1. Mr. Kirby holds Smog Check Inspector (EO) license 632331.¹ Mr. Ruskauff, President, Secretary and Treasurer of Back to Life Auto Inc. (Back to Life), holds Automotive Repair Dealer Registration No. ARD 267644 (ARD registration), and Smog Check, Test Only, Station License No. TC 267644 (Station license).

2. Citation No. M2015-0092, issued to Mr. Kirby on May 29, 2015, alleges that on November 13, 2014, he issued a Certificate of Compliance to a Bureau undercover vehicle with a “defective/missing Evaporative Emission (EVAP System) components.” The Citation and Order of Abatement directs Mr. Kirby to take an eight-hour citation class. On June 22, 2015, Mr. Kirby appealed the Citation and Order of Abatement.

3. On June 3, 2015, complainant filed an Accusation and Petition to Revoke Probation against Mr. Ruskauff based upon Mr. Kirby’s conduct, as set forth in Citation No. M2015-0092. Generally, complainant alleged that Mr. Ruskauff’s ARD registration and Station license should be revoked because he failed to comply with the law, made untrue or misleading statements, and committed acts of fraud, dishonesty or deceit. On August 10, 2015, Mr. Ruskauff filed a Notice of Defense.

4. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Prior Disciplinary Action

5. On June 21, 2012, John Wallauch, the former Chief of the Bureau, signed and thereafter filed an Accusation against Mr. Ruskauff. At the time the Accusation was filed, Mr. Ruskauff had two active ARD registrations, two active Station licenses, and an Advanced Emission Specialist Technician (EA) license. Mr. Wallauch alleged that Mr. Ruskauff’s ARD registrations, Station licenses and EA license were subject to discipline because he issued a certificate of compliance for a vehicle that was missing an Exhaust Gas Recirculation (EGR) system. As a result, the vehicle should not have passed the visual portion of the smog inspection. In aggravation, between August 18, 2005, and January 11, 2011, the Bureau had issued ten citations against Mr. Ruskauff for various violations related to the performance of smog inspections.

¹ Mr. Kirby’s Smog Check Repair Technician (EI) license No. 632332 expired on July 31, 2014.

6. On August 20, 2012, Mr. Ruskauff signed a Stipulated Settlement and Disciplinary Order (Stipulated Settlement). Mr. Ruskauff admitted the truth of each and every allegation in the Accusation. Mr. Ruskauff's ARD registrations, Station licenses and EA license were revoked. The revocation was stayed as to ARD license No. 267644 and TC license No. 267644, suspended for 30 days, and placed on probation for three years, subject to various terms and conditions, including that he comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs, submit to random inspections, complete continuing education courses and pay \$10,630.90 in costs, which he has paid in full. The Stipulated Settlement was adopted by the Bureau and was effective on November 30, 2012.²

7. On January 3, 2013, April 9, 2013, August 6, 2013, February 4, 2014, and August 5, 2014, Mr. Ruskauff attended probation conferences with representatives from the Bureau. During the conferences, Mr. Ruskauff was informed that the Bureau may send undercover vehicles to Back to Life for smog inspections. Bureau representatives also gave Mr. Ruskauff suggestions to achieve success in maintaining compliance with the terms and conditions of his probation, such as hiring experienced technicians and performing complete inspections.

November 13, 2014 Undercover Operation

TESTIMONY OF NICKOLAS LOUIE

8. Nickolas Louie is employed by the Bureau as a Program Representative I, in the Bureau's Forensic Documentation Laboratory (Documentation Lab), in Sacramento. On September 29, 2014, Mr. Louie documented the Bureau's 1997 Honda Accord SE California license number 3WSK791, (Honda) for California Smog Check Inspection Test. The Honda had an EVAP canister that has two hoses connected to the top portion of the EVAP canister. The EVAP canister and hoses are a required component of the vehicle's emission control devices. The Honda's Vehicle Emission Control Information located in the under-hood of the vehicle showed that the EVAP canister had two hoses attached to the top of the canister. Additionally, Mr. Louie testified publications such as *Mitchell* and *Alldata* provide detailed information concerning the Honda's Vehicle Emission Control system.

9. Mr. Louie explained that the "California Emissions Inspection Test requires the smog technician to visually inspect the vehicle's emission components to ensure that they are present, properly connected and in good working condition, with no defects." The vehicle must pass all visual and functional tests, before a Certificate of Compliance can be

² Mr. Ruskauff's probation was set to expire on November 30, 2015. Pursuant to the terms of the Stipulated Settlement, if an Accusation is filed against Mr. Ruskauff during the term of probation, the Bureau shall have continuing jurisdiction over the matter until a final decision on the Accusation and the period of probation is extended until the final decision is issued.

issued for the vehicle. The visual inspection requirement applies to vehicles with an On Board Diagnostic II (OBD II) inspection system (OIS) system, such as the Honda.

10. After Mr. Louie ensured that the Honda could pass the California Smog Check Inspection Tests, he removed the Honda's EVAP canister. Mr. Louie installed a defective EVAP canister with a broken inlet hose connector pipe. He also removed a inlet vapor hose, and capped the pipe coming from the fuel tank to the EVAP canister. He installed a tamper indicator on the capped pipe coming from the fuel tank. Mr. Louie photographed the EVAP canister and area where the vapor hose was removed.

11. Mr. Louie performed the California Smog Check Inspection Tests on the Honda with the defective and missing EVAP system components. The Honda failed the visual portion of the tests due to the defective and missing EVAP system components. Mr. Louie then secured the Honda at the Bureau's Documentation Lab.

TESTIMONY OF DOUG BROWN AND DECLARATION OF TRACY MASUDA

12. On November 13, 2014, Doug Brown, a Program Representative II with the Bureau's Sacramento Field Office, received the Honda from the Bureau's secured storage. Mr. Brown reviewed the declaration prepared by Mr. Louie concerning the condition of the Honda. Mr. Brown inspected the Honda and verified that the Honda's EVAP canister was defective and vapor hose was missing. He also verified the under-hood Vehicle Emission Control Information, which identified the EVAP canister and required hoses, was present.

13. After Mr. Brown inspected the Honda, he released it to Tracy Masuda, who worked for the Bureau. Ms. Masuda prepared a declaration dated November 13, 2014, regarding her role in the undercover operation. Mr. Brown instructed Ms. Masuda to drive the Honda to a pre-arranged location in Lincoln, California. Mr. Brown met Ms. Masuda at that prearranged location and re-inspected the Honda. He visually verified that the Honda's EVAP canister was defective and the vapor hose was missing. He also verified that the under-hood Emission Control Information label was present. The tamper indicator was also present. He took photographs of the area of the defective EVAP canister, the area of the missing vapor hose and the under-hood Vehicle Emission Control Information label. Mr. Brown then instructed Ms. Masuda to drive to Back to Life and request a smog inspection.

14. Ms. Masuda drove to the Honda to Back to Life and requested a smog inspection. The time was 10:41 a.m. She signed an estimate using the assumed name of Tracy Lee. "Dave" a Back to Life employee who prepared the estimate, failed to document the Honda's odometer reading on the estimate. The inspection was performed. After the inspection, Ms. Masuda paid for the inspection and received a copy of the invoice and a Vehicle Inspection Report (VIR). She left Back to Life at 10:57 a.m.

15. The VIR that Ms. Masuda received contains a box entitled "Overall Test Results." In that box, the VIR, in relevant part, states, "Congratulations! Your vehicle passed the enhanced Smog Check inspection" This box also includes the Certificate of

Compliance number assigned to the Honda and states that the Honda's "Smog Check certificate has been electronically transmitted to DMV."

16. The VIR also contains a section entitled "Emission Control Systems Visual Inspection/Functional Check Results." Under this title, in parentheses, the VIR states that, "Visual/Functional tests are used to assist in the identification of oxides of nitrogen, crankcase and cold start emissions which are not measured during the ASM test." One of the emission control systems listed on the VIR is the "Fuel Evaporative Controls." The VIR indicates that the Honda's Fuel Evaporative Controls passed the visual inspection.

17. Near the bottom of the VIR is an area entitled "Smog Check Inspection Station Information." The VIR identifies Mr. Kirby's license number as the technician who performed the smog inspection. Mr. Kirby signed the VIR under a certification that states:

I certify, under penalty of perjury, under the laws of the State of California, that I performed the inspection in accordance with all bureau requirements, and that the information listed on this vehicle inspection report is true and accurate.

18. After receiving the VIR, Ms. Masuda drove the Honda to Mr. Brown at the pre-arranged location in Lincoln. Mr. Brown re-inspected the Honda and verified that the EVAP canister was still defective, the vapor hose was missing and the under-hood Emission Control Information label was still present. The tamper indicator was also present. Mr. Brown took additional photographs of the area of the defective canister, the area of the missing vapor hose and the under-hood Emission Control Information label.

19. The Honda could not pass the California Smog Check Inspection or receive a Certificate of Compliance with the defective EVAP canister and missing vapor hose. Instead of noting on the VIR that the Fuel Evaporative Controls had passed, Mr. Kirby should have noted that the Fuel Evaporation Controls failed due to the defective EVAP canister and missing vapor hose.

Respondents' Evidence

TESTIMONY OF RYLAN KIRBY

20. Mr. Kirby has been licensed by the Bureau since 2010. Approximately two and one-half years ago, he began working as a Smog Technician at Back to Life. When he interviewed for the position, Mr. Ruskauff told him that he was on probation with the Bureau. Mr. Ruskauff explained to Mr. Kirby that he should treat every vehicle like a Bureau undercover vehicle. Mr. Ruskauff expected Mr. Kirby to be diligent and avoid a citation. Mr. Ruskauff was typically present at Back to Life and available to Mr. Kirby if he had any questions. Mr. Kirby also could access *Mitchell* and *Alldata* online.

21. Mr. Kirby recalled conducting the smog inspection on the Honda. The vehicle had a single hose coming from the EVAP canister, but the under-hood emissions label showed an EVAP canister with two hoses on the top. The EVAP did not show any signs of damage and there were no dangling hoses which would have alerted Mr. Kirby that the EVAP canister was defective. The malfunction indicator light on the vehicle was not illuminated, which would have alerted Mr. Kirby that there was a problem with the EVAP system.

Mr. Kirby testified that he was aware that some 1997 Honda Accord DX models have an EVAP canister with a single top fitting and single hose coming from the top of the EVAP canister. Based on his observations, he believed the Honda he inspected had the EVAP canister with a single top fitting and single hose. As a result, he believed that the Honda's under-hood emission label was not accurate. Mr. Kirby did not recall whether he reviewed *Alldata* to confirm whether his assumption was accurate. Respondents produced a copy of the vacuum routing for a 1997 Honda Accord DX, which demonstrated that the EVAP canister has a single top fitting and single hose coming from the top of the canister, consistent with Mr. Kirby's testimony.

22. Mr. Kirby testified that it was not his intention to violate the Bureau's regulations. He made a mistake. Mr. Kirby has changed his practice since he received the Citation and Order of Abatement. Now if he inspects a vehicle with an inconsistent under-hood emission labels, he consults secondary sources and, if necessary, sends the vehicle to a Bureau referee for final determination. He does not want to make the same mistake again. Mr. Kirby signed an Employee Liability Agreement (Agreement) on February 16, 2017, which sets forth the policies he is required to adhere to while working at Back to Life. For example, the Agreement provides that Mr. Kirby must utilize resources such as *Alldata* or *Mitchell* if he has questions regarding the visual or functional portion of the smog tests he performs. Mr. Kirby understands that the policies set forth in the Agreement are important to follow so that he does not receive another citation and Mr. Ruskauff is able to stay in business.

TESTIMONY OF OSCAR GOMEZ

23. Oscar Gomez testified as an expert on behalf of respondents. Since 2014, Mr. Gomez has worked as an Automotive Technician and Lead Instructor for Master Automotive Training, in Chino, California. Mr. Gomez trains smog technicians in the state required curriculum for conducting smog inspections. Mr. Gomez holds a smog technician certification and has worked as a smog technician as well.

24. Mr. Gomez reviewed the Accusation filed against Mr. Ruskauff and supporting documentation prepared by the Bureau, including photographs of the Honda's EVAP canister. Mr. Gomez opined that it would have been difficult for Mr. Kirby to locate and inspect the EVAP canister and hose. Mr. Kirby would have needed to push aside a hose to view the EVAP canister or disassemble the air intake hose to view the canister, which he was not required to do. He also opined that the OBD II system malfunction indicator light

did not alert Mr. Kirby that there was an issue with the EVAP system. Mr. Gomez conceded that a visual inspection of the vehicle was required regardless of whether the malfunction indicator light is illuminated.

25. Mr. Gomez further opined that vehicles often have inconsistent under-hood labels. Mr. Gomez contended that if Mr. Kirby saw that the Honda's under-hood label was inconsistent with his visual inspection, he should have reviewed a secondary source such as *Mitchell* or *Alldata*. Mr. Gomez conceded that the *Alldata* diagram for the Honda shows an EVAP canister with two hoses on top.

TESTIMONY OF SCOTT RUSKAUFF

26. Mr. Ruskauff has been the Chief Executive Officer of Back to Life since 1989. He was a licensed smog check inspector until his license was revoked in 2012. As part of the terms of his probation, Mr. Ruskauff attended a series of probation conferences with Bureau representatives. He has agreed to suggestions made during the conferences to ensure he did not violate his probation. He has also implemented policies his employees are required to follow. For example, he is available to his staff to answer questions. He now has a service person available to look up information about a vehicle if a technician has a question. He also implemented new policies and procedures that require technicians to check sources such as *Alldata* if there is a question about a vehicle's components. If, after the technician has reviewed all the resources available and there is still a question as to whether a vehicle should pass a smog inspection, the vehicle is sent to another shop or a Bureau referee.

27. Mr. Ruskauff described Mr. Kirby as a very thorough technician. He contended that Mr. Kirby made an "honest mistake" when he issued a Certificate of Compliance for the Honda. Mr. Ruskauff ensures that he is available to Mr. Kirby every day. He also goes over policies and procedures with Mr. Kirby on a daily basis to ensure that he is complying with the Bureaus regulations.

Discussion

28. The Bureau plays a vital role in safeguarding our environment by mandating that vehicles are thoroughly inspected to ensure that their emissions do not exceed safety standards. Mr. Kirby's failure to identify the defective EVAP canister and missing hose on the Honda establishes that he would benefit from additional training to ensure that, in the future, he will be better able to identify that a vehicle's emission components are present and in good working condition.

29. The evidence did not establish that Mr. Kirby's failure to perform a proper smog inspection was the result of fraud. Rather, he credibly testified that he made an inaccurate assumption regarding the type of EVAP canister required on the Honda. He failed to check available sources to confirm his assumption. Mr. Gomez conceded that the discrepancy between the information on the under-hood emissions label and the EVAP canister Mr. Kirby observed on the Honda dictated that he check secondary sources such as

Alldata. Had he done so, he would have learned that the Bureau's Honda SE had an EVAP canister with two hoses on the top of the canister, unlike the Honda DX model that has an EVAP canister with a single hose on top.

30. As a result of Mr. Kirby's issuance of a Certificate of Compliance for a vehicle that had a defective EVAP canister and missing hose and Back to Life's include the odometer reading on the estimate provided to Ms. Masuda, Mr. Ruskauff is subject to discipline for making an untrue statement regarding the condition of the Honda, failure to comply with provisions of the Automotive Repair Act, and violations of the Motor Vehicle Inspection Program and various Bureau regulations. Additionally, Mr. Ruskauff violated the terms of his probation by failing to comply with all statutes, regulations and rules governing automotive inspections and estimates.

31. Mr. Ruskauff demonstrated that he has undertaken significant efforts to ensure that he complies with the Bureau's rules and regulations and the terms of his probation. Mr. Ruskauff is available to his employees every day. He hired a service person to look up information about a vehicle if a technician has a question. He also implemented new policies and procedures that require technicians to check secondary resources if there is a question about a vehicle's components. If there is any question about whether a vehicle should a pass smog inspection, the vehicle is sent to another shop or a Bureau referee for a final decision. He persuasively testified that he understands his obligations to abide by the Bureau's rules and regulations. Given the efforts Mr. Ruskauff has undertaken, the public interest, health and safety would be adequately protected if his probation is continued for an additional three years, under appropriate terms and conditions. The additional time on probation will afford Mr. Ruskauff to demonstrate to the Bureau his commitment to adhering the Bureau's rules and regulations.

Cost of Enforcement

32. Complainant requested that pursuant to Business and Professions Code section 125.3, Mr. Ruskauff be ordered to reimburse the Bureau for the reasonable costs of investigation and enforcement of this matter in the total amount of \$11,208.23. In support of this total amount, complainant submitted a Certification of Prosecution Costs and Declaration of Karen Denvir which stated that the Bureau has been billed \$7,510 for the time the Attorney General's Office worked on this matter and a declaration signed by William Thomas, Program Manager II for the Bureau, with an attached list of hours and costs of investigation conducted by the Bureau totaling \$3,698.23.

33. Attached to the certification of costs prepared by Ms. Denvir was a computer printout which described the tasks performed, the amount of time billed, and the billing rate by each professional, which appropriately established the requested enforcement costs. The certification prepared by the Bureau included the hours billed by the Bureau's Program Representatives and the Undercover Vehicle Operator and Evidence costs billing rates, but it did not include a description of the general tasks they performed or the time spent on each task. In the absence of this information, there was not sufficient evidence to substantiate the

\$3,698.23 in investigation costs. Consequently, as set forth in Legal Conclusions 19 through 21, the investigation costs cannot be awarded to Complainant.

LEGAL CONCLUSIONS

Citation Against Rylan Kirby

1. Health and Safety Code section 44032 provides, in relevant part, that “[q]ualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.” Health and Safety Code section 44012 provides, in relevant part, that smog tests “shall be performed in accordance with procedures prescribed by the department.”

2. Mr. Kirby’s issuance of a Certificate of Compliance for a vehicle that had a defective canister violated Health and Safety Code sections 44032. Consequently, the Bureau established cause to issue Citation No. M2015-0092 against Mr. Kirby’s Smog Check Inspector license and Smog Check Repair Technician license.

3. Health and Safety Code section 44050 provides, in pertinent part that:

(c) An order of abatement issued pursuant to this section shall fix a reasonable time for abatement of the violation. An order of abatement may require any or all of the following:

[¶] . . . [¶]

(2) The smog check technician to successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5, or successfully complete one or more advanced retraining courses prescribed by the department, or both.

4. In accordance with Health and Safety Code section 44050, subdivision (c), Mr. Kirby shall be ordered to complete an eight-hour Citation class.

Accusation Against Back to Life and Scott Ruskauff

5. In revocation proceedings, the Bureau must prove that charges in the Accusation are true, and it must do so using the preponderance of the evidence standard. (*Imports Performance et al. v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) Respondent has the burden of establishing any affirmative defenses.

6. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), the Director of the Department may discipline the registration of an automotive repair dealer for any “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” including “making or authorizing . . . any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” As set forth in Factual Findings 8 through 19, Mr. Kirby issued a Certificate of Compliance for a vehicle with a defective EVAP canister and missing hose. Had Mr. Kirby exercised reasonable care he would have discovered the defective part and missing hose. Therefore, cause exists to discipline Mr. Ruskauff’s ARD.

7. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(2), the Director of the Department may discipline the registration of an automotive repair dealer for allowing a customer to sign any work order that does not state the automobile’s odometer reading at the time of repair. As set forth in Factual Finding 14, an employee of Back to Life failed to include the Honda’s odometer reading on the invoice provided to Ms. Masuda. Therefore, cause exists to discipline Mr. Ruskauff’s ARD.

8. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), the Director of the Department may discipline the registration of an automotive repair dealer for engaging in any “conduct that constitutes fraud.” As set forth in Factual Findings 20 through 22 and 29, Mr. Kirby’s failure to identify the defective EVAP canister and missing hose, was not a result of fraud. Therefore, the Bureau failed to establish cause for discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

9. Health and Safety Code section 44072.2 provides, in relevant part, that the Director of the Department may take disciplinary action against a license if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter 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.

10. Pursuant to Health and Safety Code section 44012, subdivision (a), a smog check station shall ensure that “[e]mission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.” As set forth in Factual Findings 8 through 19,

Mr. Kirby failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the Honda in accordance with test procedures. Therefore, cause exists to discipline Mr. Ruskauff's station license for violations of Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (a).

11. Pursuant to Health and Safety Code section 44012, subdivision (f), a smog check station shall ensure that a "visual or functional check is made of emission control devices specified by the department" As set forth in Factual Findings 8 through 19, Mr. Kirby failed to perform emission control tests on the Honda in accordance with procedures prescribed by the Bureau. Therefore, cause exists to discipline Mr. Ruskauff's station license for violation of Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (f).

12. Pursuant to Health and Safety Code section 44015, subdivision (b), a licensed smog check station shall not issue a Certificate of Compliance unless the vehicle meets the requirements of Health and Safety Code section 44012. As set forth in Factual Findings 8 through 19, Mr. Kirby issued a Certificate of Compliance for a vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012. Therefore, cause exists to discipline Mr. Ruskauff's station license for violation of Health and Safety Code section 44015, subdivision (b).

13. Pursuant to California Code of Regulations, title 16, section 3340.42, smog check technicians shall conduct tests and inspections in accordance with the Bureau's specifications. As set forth in Factual Findings 8 through 19, Mr. Kirby failed to conduct the required smog inspection on the Honda in accordance with the Bureau's specifications. Therefore, cause exists to discipline Mr. Ruskauff's station license for violation of Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

14. Pursuant to California Code of Regulations, title 16, section 3340.35, subdivision (c), a "licensed 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." As set forth in Factual Findings 8 through 19, Mr. Kirby issued a Certificate of Compliance for a vehicle that was not inspected in accordance with Health and Safety Code section 44012 and California Code of Regulations, title 16, section 3340.42. Therefore, cause exists to discipline Mr. Ruskauff's station license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.35, subdivision (c).

15. Pursuant to Health and Safety Code section 44072.2, subdivision (d), Mr. Ruskauff's station license may be disciplined if the licensee "[c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured." As set forth in Factual Findings 17 Mr. Kirby certified under penalty of perjury that he performed the inspection in accordance

with all bureau requirements, and that the information listed on this vehicle inspection report is true and accurate. This was not true. He failed to ensure that the Honda had the required emissions components. As a result, he engaged in acts involving dishonesty that injured the people of California when he issued a Certificate of Compliance for the Honda. Therefore, the Bureau established cause for discipline pursuant to Health and Safety Code section 44072.2, subdivision (d).

Cause to Revoke Probation

16. Pursuant to the terms and conditions of respondent's probation, respondent was required to "[c]omply with all statutes, regulations and rules governing automotive inspections, estimates and repairs." As set forth in Factual Findings 5 and 6, Mr. Ruskauff's ARD and station license were on probation at the time of the conduct at issue in this matter. As set forth in Factual Findings 8 through 19, Mr. Ruskauff's employees failed to comply with the statutes and regulations governing smog inspections. Therefore, cause exists to revoke respondent's probation pursuant to the terms and conditions of probation.

17. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the Director of the Department may discipline the registration of an automotive repair dealer for "repeated and willful violations of this chapter, or regulations" pertaining to the Automotive Repair Act. As set forth in Factual Findings 5 through 7, Mr. Ruskauff has been on probation for over four years. The Accusation and Petition to Revoke Probation relates to a single incident, which does not constitute "repeated and willful violations." Therefore, the Bureau failed to establish cause for discipline pursuant to Business and Professions Code section 9884.7, subdivision (c).

Appropriate Discipline

18. Respondent's license was on probation at the time of the conduct giving rise to this Accusation and Petition to Revoke Probation. As set forth in Factual Findings 26 through 31, he presented sufficient evidence to establish that he has implemented corrective measures in response to the prior disciplinary action, and that he has taken further steps to prevent the conduct which resulted in the citation issued to Mr. Kirby. Mr. Ruskauff understands and accepts responsibility for his conduct and the conduct of his employees. As a result, the public interest will be protected if he is placed on probation for three years, under appropriate terms and conditions to protect the public.

Cost Recovery

19. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the following factors to be considered in determining the

reasonableness of the costs sought pursuant to regulatory and statutory provisions like Business and Professions Code section 125.3:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a chiropractor engaged in relatively innocuous misconduct.

20. California Code of Regulations, title 1, section 1042, subdivision (b), sets forth the requirements that an agency must comply with in order to recover its costs, and in relevant part provides:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed,

the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

21. As set forth in Factual Finding 32 and 33, there was sufficient evidence to substantiate that the \$7,510 in enforcement costs charged by the Attorney General's office were reasonable. The certification of costs submitted by the Bureau for investigation costs did not comply with requirements of California Code of Regulations, title 1, section 1042, subdivision (b). As a result, Mr. Ruskauff should be ordered to pay the Bureau \$7,510 for the costs of enforcement paid to the Office of the Attorney General.

ORDER

1. Citation No. M2015-0092 issued to respondent Rylan John Kirby is **AFFIRMED**. Mr. Kirby shall complete an eight-hour Citation class with proof of completion submitted to the Bureau within 30 days from the effective date of this decision. Failure to comply will result in suspension of Mr. Kirby's Smog Check Inspector Qualification.

2. The Automotive Repair Dealer Registration Number ARD 267644 and the Smog Check, Test Only, Station License Number TC 267644, issued to respondent Scott Anthony Ruskauff, President, Treasurer and Secretary of Back to Life Auto, Inc. are hereby **REVOKED**. Revocation is **STAYED**, and Mr. Ruskauff's licenses are placed on probation for three (3) years subject to the following terms and conditions:

a. **Obey All Laws:** Mr. Ruskauff shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. **Reporting:** Mr. Ruskauff or his authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. **Report of Financial Interest:** Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of Mr. Ruskauff's facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

d. **Random Inspections:** Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs or smog inspections, up to and including the point of completion.

e. **Jurisdiction:** If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

f. **Violation of Probation:** Should the Director of Consumer Affairs determined that Mr. Ruskauff has failed to comply with the terms and conditions of probation, the Department may, after giving notice and an opportunity to be heard, temporarily or permanently invalidate the ARD and suspend or revoke the Station license.

g. **Costs:** Mr. Ruskauff shall pay \$7,510 to the Bureau pursuant to a reasonable payment plan. Payment must be completed prior to completion of probation.

h. **Completion of Probation:** Upon successful completion of probation, Mr. Ruskauff's ARD and Station license shall be restored without condition.

Dated: March 14, 2017

DocuSigned by:
Marcie Larson
F72F4885838541C...

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

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Attorney General of California
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Supervising Deputy Attorney General
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6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:
13 **BACK TO LIFE AUTO INC.**
14 **SCOTT ANTHONY RUSKAUFF, PR/TR/SEC**
15 **690 Lincoln Boulevard, Suite 120**
16 **Lincoln, CA 95648**
17 **Automotive Repair Dealer Registration No.**
18 **ARD 267644**
19 **Smog Check Test Only Station License No.**
20 **TC 267644**
21 Respondent.

Case No. *79/15-125*
**ACCUSATION AND PETITION TO
REVOKE PROBATION**

20 Patrick Dorais ("Complainant") alleges:

21 **PARTIES**

- 22 1. Complainant brings this Accusation and Petition to Revoke Probation solely in his
23 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of
24 Consumer Affairs.
- 25 2. On or about January 6, 2012, the Bureau issued Automotive Repair Dealer
26 Registration Number ARD 267644 ("registration") to Back to Life Auto Inc., with Scott Anthony
27 Ruskauff as the President, Secretary, and Treasurer. The registration was in full force and effect
28

1 at all times relevant to the charges brought herein and will expire on January 31, 2016, unless
2 renewed.

3 3. On or about February 7, 2012, the Bureau issued Smog Check Test Only Station
4 Number TC 267644 ("station license") to Back to Life Auto Inc. ("Respondent"), with Scott
5 Anthony Ruskauff as the President, Secretary, and Treasurer. The station license was in full force
6 and effect at all times relevant to the charges brought herein and will expire on January 31, 2016,
7 unless renewed.

8 PRIOR DISCIPLINE

9 4. Pursuant to a Stipulated Settlement and Disciplinary Order, in a disciplinary action
10 titled, *"In the Matter of the Accusation Against: Scott Anthony Ruskauff, Back to Life Auto, Case*
11 *No. 79/12-170,"* the Bureau adopted a Stipulated Settlement and Disciplinary Order effective
12 November 31, 2012, wherein Respondent's Automotive Repair Dealer Registration Number ARD
13 267644 and Smog Check Test Only Station License Number TC 267644 were revoked.
14 However, the revocation was stayed and Respondent was placed on probation for a period of
15 three (3) years under terms and conditions. In addition, Respondent's Automotive Repair Dealer
16 Registration Number ARD 267644 and Smog Check Test Only Station License Number TC
17 267644 were suspended for a period of thirty (30) days. The Decision and Order was based on
18 numerous Findings of Fact, including the following: On or about December 1, 2011, Respondent
19 issued a certificate of compliance to a vehicle that could not have passed the visual portion of the
20 smog inspection because the vehicle's EGR (Exhaust Gas Recirculation) system was missing,
21 thereby failing to perform emission control tests on a vehicle in accordance with procedures
22 prescribed by the department, and Respondent failed to determine that all emission control
23 devices and systems required by law were installed and functioning correctly in accordance with
24 test procedures.

25 JURISDICTION

26 5. Business and Professions Code ("Code") section 9884.7 provides that the Director
27 may revoke an automotive repair dealer registration.

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(4) Any other conduct that constitutes fraud.

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

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

12. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

(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.

COST RECOVERY

13. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate 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.

ACCUSATION

UNDERCOVER OPERATION – NOVEMBER 13, 2014

14. On or about November 13, 2014, a Bureau undercover operator (“operator”) drove a Bureau-documented Honda to Respondent's facility and requested a smog inspection. The

1 vehicle could not pass a smog inspection because the vehicle had a defective fuel evaporative
2 canister and missing vapor hose. Respondent performed the smog inspection and issued
3 electronic Certificate of Compliance Number [REDACTED] certifying that it had tested and
4 inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations.
5 In fact, the vehicle could not have passed a smog inspection because the vehicle had a defective
6 fuel evaporative canister and missing vapor hose. The operator paid Respondent \$40.00 and
7 received a copy of the Invoice No. [REDACTED] and the Vehicle Inspection Report.

8 15. On or about November 19, 2014, a Bureau representative re-inspected the vehicle
9 and found that the vehicle still had a defective fuel evaporative canister and missing vapor hose.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 16. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
13 subdivision (a)(1), in that on or about November 13, 2014, it made or authorized statements
14 which it knew or in the exercise of reasonable care should have known to be untrue by certifying
15 that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle
16 could not have passed a properly performed smog inspection because the vehicle had a defective
17 fuel evaporative canister and missing vapor hose.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 17. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
21 subdivision (a)(4), in that on or about November 13, 2014, it committed acts which constitute
22 fraud by issuing electronic Certificate of Compliance No. [REDACTED] for the vehicle without
23 performing a bona fide inspection of the emission control devices and systems on the vehicle,
24 thereby depriving the People of the State of California of the protection afforded by the Motor
25 Vehicle Inspection Program.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Provisions of the Automotive Repair Act)**

3 18. Respondent's registration is subject to discipline under Code section 9884.7(a)(2),
4 in that on or about November 13, 2014, it caused or allowed the operator to sign an estimate that
5 failed to state the vehicle's odometer reading.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Motor Vehicle Inspection Program)**

8 19. Respondent's station license is subject to discipline pursuant to Health & Safety
9 Code section 44072.2, subdivision (a), in that on or about November 13, 2014, it failed to comply
10 with the following sections of that Code:

11 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
12 control devices and systems required by law were installed and functioning correctly in
13 accordance with test procedures.

14 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control
15 tests on the vehicle in accordance with procedures prescribed by the department.

16 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
17 Compliance No. [REDACTED] for the vehicle without properly testing and inspecting the vehicle to
18 determine if it was in compliance with Health & Safety Code section 44012.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations)**

21 20. Respondent's station license is subject to discipline pursuant to Health & Safety
22 Code section 44072.2, subdivision (c), in that on or about November 13, 2014, it failed to comply
23 with provisions of California Code of Regulations, title 16, as follows:

24 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
25 Compliance No. [REDACTED] for the vehicle even though the vehicle had not been inspected in
26 accordance with section 3340.42.

27 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
28 vehicle in accordance with the Bureau's specifications.

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 21. Respondent's station license is subject to discipline pursuant to Health & Safety
4 Code section 44072.2, subdivision (d), in that on or about November 13, 2014, it committed
5 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate
6 of Compliance No. [REDACTED] for the vehicle without performing a bona fide inspection of the
7 emission control devices and systems on the vehicle, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 **PETITION**

10 22. At all times after the effective date of Respondent's probation, Condition 8 stated:

11 Should the Director of Consumer Affairs determine that Respondent has failed
12 to comply with the terms and conditions of probation, the Department may, after
13 giving notice and opportunity to be heard, temporarily or permanently invalidate the
14 registration, and suspend or revoke the license.

15 23. Grounds exist to revoke Respondent's probation and reimpose the Order of
16 revocation of Respondent's registration and smog check station license, in that he violated
17 Condition 1 of his probation as follows:

18 **CAUSE TO REVOKE PROBATION**

19 **(Failure to Obey all Laws)**

20 24. At all times after the effective date of Respondent's probation, Condition 1 states:

21 Comply with all statutes, regulations, and rules governing automotive
22 inspections, estimates, and repairs.

23 25. Respondent's probation is subject to revocation, in that he failed to comply with all
24 statutes, regulations, and rules governing automotive inspections, estimates, and repairs, as set
25 forth above in paragraphs 14 through 21.

26 **OTHER MATTERS**

27 26. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
28 probation the registrations for all places of business operated in this state by Scott Anthony
Ruskauff, upon a finding that he has, or is, engaged in a course of repeated and willful violation
of the laws and regulations pertaining to an automotive repair dealer.

Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/12-170



CASE MANAGEMENT UNIT
10949 North Mather Boulevard, Rancho Cordova, CA 95670
P (916) 403-8060 F (916) 464-2879 www.bar.ca.gov



REISSUED Citation No: M2015-0092

Date: 5/27/2015

Smog Technician: Rylan John Kirby

Address: 630 GARDEN HWY. SACRAMENTO, CA 95833

Tech License #: EO632331 (formerly Advanced Emission Specialist Technician License No. EA632331¹)

CITATION

You are hereby notified that you are in violation of Section 44032 of the Health and Safety Code. In accordance with Sections 44050 of the Health and Safety Code, you are hereby directed to complete an 8-HOUR BAR CERTIFIED TRAINING COURSE. The Citation Class must be scheduled within 30 days and completed in 60 days from the date of the Citation Service Conference, with proof of completion submitted to BAR within 60 days of the Citation Service Conference.

8-Hour BAR Certified Training Course

CAUSE FOR CITATION

On 11/13/2014, you issued Certificate of Compliance [REDACTED] to a Bureau of Automotive Repair undercover vehicle with defective/missing Evaporative Emission (EVAP) System components.

Note: Failure to comply with this Citation and Order of Abatement may be grounds for revocation of your license.

Bureau of Automotive Repair

Date:

MAY 29 2015

¹ Effective August 1, 2012, California Code of Regulation, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/ or Smog Check Repair Technician (EI) license.

Case Management Unit
10949 North Mather Boulevard, Rancho Cordova, CA 95670
P (916) 403-8060 F (916) 464-2879 www.bar.ca.gov



Bureau of Automotive Repair

Order of Abatement

Technician Name: Rylan John Kirby

Technician License number: EO632331

The Bureau hereby orders you to immediately cease and desist from violating Health & Safety Code section 44032.

44032 Health & Safety Code: No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

You are ordered to attend an 8 hour Citation class to satisfy this Citation and Order of Abatement. The 8 hour class must be scheduled within 30 days and completed in 60 days from the date of the Citation Service Conference, with proof of completion submitted to the address listed below. Pursuant to 44050 (e) of the Health and Safety Code, "*Failure to comply with an Order of Abatement or payment of an administrative fine issued by the department pursuant to this section is grounds for suspension or revocation of the license, or placing the license on probation.*"; and California Code of Regulations 3340.31 (b). "*Failure by a licensed technician to complete retraining when required by the department shall be grounds for revocation or suspension of a smog check technician's license, pursuant to section 44045.6 of the Health and Safety Code.*"

Bureau of Automotive Repair
Case Management
10949 North Mather Blvd
Rancho Cordova, CA 95670