

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

In the Matter of the Accusation Against:

PRO SMOG
HASSAN MOHAMMAD ALRAWASHDEH,
Owner

Automotive Repair Dealer Registration
No. ARD 280040
Smog Check, Test Only, Station License
No. TC 280040

HASSAN MOHAMMAD ALRAWASHDEH

Smog Check Inspector License No. EO 637726

Respondents.

Case No. 79/16-13138

OAH No. 2017090095

PROPOSED DECISION

This matter was heard before Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 20, 2018, in Sacramento California.

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

William Ferreira, Attorney at Law, represented respondent Pro Smog, Hassan Mohammad Alrawashdeh, Owner, who was not present.

Evidence was received, argument was heard, and the matter was submitted for decision on March 20, 2018.

FACTUAL FINDINGS

Licensure and Jurisdiction

1. On April 23, 2015, the Bureau issued Automotive Repair Dealer Registration number ARD 280040 to respondent, doing business as Pro Smog. The registration will expire on April 30, 2018, unless renewed or revoked. On May 21, 2015, the Bureau issued Smog Check, Test Only, Station License number TC 280040 to respondent, doing business as Pro Smog. The license will expire on April 30, 2018, unless renewed or revoked.

2. On January 12, 2015, the Bureau issued Smog Check Inspector (EO) License number EO 637726 to respondent. The license will expire on December 31, 2018, unless renewed or revoked.

3. On June 29, 2017, complainant, solely in his official capacity, signed and thereafter filed the Accusation. Respondent timely filed a Notice of Defense, requesting a hearing. 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.

License Discipline History

4. On September 30, 2015, the Bureau issued Citation C2015-2293 against respondent's ARD and test-only licenses for violating Health and Safety Code section 44012, subdivision (f). The Bureau alleged that respondent issued a certificate of compliance to a Bureau undercover vehicle with a missing catalytic converter. The Bureau assessed a \$1,000 fine, which respondent paid on January 28, 2016. On September 30, 2015, the Bureau also issued Citation M2015-2294 against respondent's smog technician license for the same undercover vehicle and certificate of compliance. Respondent was ordered to complete an eight-hour Bureau-approved training course. Respondent completed the course on February 13, 2016.

Vehicle Information Database (VID) Data Review – Clean-Plugging

5. The Accusation alleges respondent issued smog check certificates that were false and fraudulent, in that respondent did not actually test the vehicles for which smog certificates were issued. The allegations involve smog testing done following the Bureau's updating, on March 9, 2015, of the California Smog Check Program, which required the use of an On-Board Diagnostic Inspection System (BAR-OIS). The BAR-OIS smog check equipment is required when inspecting model-year 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device (DAD), computer, bar-code scanner, and printer.

6. "Clean plugging" is an illegal technique used to fraudulently pass a vehicle through a smog check inspection. Part of the smog test is an On Board Diagnostics -

Generation II (OBDII) functional test in which the licensed inspector connects a cable from the station's test computer to a Diagnostic Link Connector, which is a plug found inside the vehicle's passenger cabin. Through the plug and cable, the test computer retrieves information from the vehicle's on-board computer. When clean plugging a vehicle, the technician enters information into the station's computer-based smog testing system about the vehicle to be issued a certificate indicating it passed the inspection, but this is done by actually connecting the test cable to a different vehicle. The purpose of clean plugging is to issue fraudulent smog Certificates of Compliance (certificates) to vehicles that are not in smog compliance or are not even present for testing.

7. The OBDII testing process produces vehicle information including the automobile's Vehicle Identification Number (VIN). A VIN is physically present on all vehicles, and is most often found on the vehicle's dash and on the door. The VIN is also required to be programmed into the OBDII system on 2005 and newer vehicles. The VIN has also been programmed into the OBDII system for many earlier-model years of automobiles. This electronically programmed VIN is referred to as the "eVIN," which is transmitted to the Vehicle Information Database (VID) during the smog check and must match the automobile's physical VIN.

8. During an OIS smog check, two other types of data distinct to the vehicle being tested are also retrieved and recorded. The first includes the vehicle's "communication protocol," or the specified communication "language" used by the OBDII computer to communicate with scan tools and other devices such as the BAR-OIS. The communication protocol is programmed into the OBDII computer during the vehicle's manufacture and does not change.

9. The second distinct form of data collected is the total number of Parameter Identifications (PIDs) that exist for the vehicle being tested. PIDs are data points reported by the OBDII computer to the scan tool or BAR-OIS, relaying information about, for example, engine speed (rpm), vehicle speed, and engine temperature. The "PID count" refers to the number of data points reported by the vehicle's OBDII computer. Each make and model vehicle reports a specific number of PID counts; the PID count does not vary for one particular make and model vehicle.

10. Derek Bryant is a Program Representative I with the Bureau, and works out of the Fresno Field Office. As a Program Representative I, he searches for anomalies in the VID data using automated data checks. Information on each smog check inspection performed by a smog check station is transmitted electronically to the VID from the station's BAR97 Emissions Inspection System (EIS), a computer-based analyzer.

11. Mr. Bryant initiated an investigation on August 2, 2016. He reviewed data obtained from the Bureau's VID pertaining to smog inspections performed at Pro Smog. He found that respondent performed smog inspections on four vehicles identified below using a clean-plugging method, which resulting in the issuance of fraudulent certificates for all four vehicles as follows.

Clean-Plugged Vehicles

VEHICLE ONE

12. On July 18, 2016, respondent performed a smog inspection on a 2000 Toyota Tundra Limited (Vehicle 1), resulting in the issuance of Smog Certificate of Compliance (certificate) number ZH117964C. The OIS test results showed that the eVIN that was recorded did not match the physical VIN on the vehicle. Mr. Bryant reviewed the Comparative OIS Test Data for the same make and model vehicles and found that the PID count recorded during the inspection was not consistent with the communication protocol and PID count for that make and model vehicle. The eVIN, communication protocol, and PID count, however, did match a 2006 Toyota Tundra Double Cab SR5 that had passed a smog test at Pro Smog on April 14, 2016. This was evidence that the DAD was not connected to Vehicle 1 during the smog inspection, resulting in the issuance of a fraudulent certificate.

VEHICLE TWO

13. On October 1, 2016, respondent performed a smog inspection on a 2000 Chevrolet Silverado K1500 (Vehicle 2), resulting in issuance of certificate number QE523497C. The OIS test results showed that the eVIN that was recorded did not match the physical VIN on the vehicle. Mr. Bryant reviewed the Comparative OIS Test Data for the same make and model vehicles and found that the PID count recorded during the inspection was not consistent with the communication protocol and PID count for that make and model vehicle. The eVIN, communication protocol, and PID count, however, did match a 2001 GMC Yukon that had passed a smog test at Pro Smog on the same day: October 1, 2016. This was evidence that the DAD was not connected to Vehicle 2 during the smog inspection, resulting in the issuance of a fraudulent certificate.

VEHICLE THREE

14. On October 27, 2016, respondent performed a smog inspection on a 2005 Toyota Tundra Access Cab SR5 (Vehicle 3), resulting in issuance of certificate number QG381029C. The OIS test results showed that the eVIN that was recorded did not match the physical VIN on the vehicle. Mr. Bryant reviewed the Comparative OIS Test Data for the same make and model vehicles and found that the eVIN was not reported for that make and model vehicle, and would not be received by the VID. He further found that the PID count recorded during the inspection was not consistent with the communication protocol and PID count for that make and model vehicle. The eVIN, communication protocol, and PID count, however, did match a 2006 Toyota Tacoma PreRunner Double Cab that had passed a smog test at another smog facility on January 20, 2015. This was evidence that the DAD was not connected to Vehicle 3 during the smog inspection, resulting in the issuance of a fraudulent certificate.

VEHICLE FOUR

15. On November 7, 2016, respondent performed a smog inspection on a 2006 Honda CR-V LX (Vehicle 4), resulting in issuance of certificate number QG654089C. The OIS test results showed that the eVIN that was recorded did not match the physical VIN on the vehicle. Mr. Bryant reviewed the Comparative OIS Test Data for the same make and model vehicles and found that the PID count recorded during the inspection was not consistent with the communication protocol and PID count for that make and model vehicle. The eVIN, communication protocol, and PID count, however, did match a 2008 Honda Civic LX, which was one of the cars on the lot of respondent's used car dealership, and which had passed a smog test at Pro Smog on November 2, 2016. This was evidence that the DAD was not connected to Vehicle 4 during the smog inspection, resulting in the issuance of a fraudulent certificate.

16. Following Mr. Bryant's review of the data, he spoke with respondent at Pro Smog. Respondent informed Mr. Bryant that he was the only smog technician at Pro Smog. When asked for the VIRs on the vehicles above, respondent produced them. He also produced all of the invoices that Mr. Bryant requested, except for smog tests done on vehicles that respondent's used car dealership owned. It is respondent's practice not to write invoices for his own cars.

Mr. Bryant also reviewed respondent's certificate sales history. The certificate numbers that Pro Smog purchased matched the certificates issued to Vehicles 1 through 4. Certificates are purchased in batches of 50. A licensee can create an account to automatically order a new batch when necessary. Respondent purchased 50 certificates on September 22, 2016, October 20, 2016, and October 29, 2016. Mr. Bryant concluded that Pro Smog performs a relatively high volume of smog inspections, based on its certificate purchases.

17. Respondent did not testify or submit other evidence in his defense.

Discussion

18. The weight of the evidence established that respondent issued certificates of compliance to Vehicles 1 through 4. In doing so, he certified under penalty of perjury that each vehicle passed a properly performed smog inspection. He never connected the DAD to any of the vehicles during the inspection, however. Instead, he connected the DAD to another vehicle to generate fraudulent BAR-OIS data and a certificate of compliance. Such conduct constituted dishonest, fraudulent, and deceitful acts, and violated the statutes and regulations governing California's Smog Check Program.

19. Through counsel, respondent argued that the incorrect eVIN, PID count, and protocol data could have been produced for a variety of reasons that did not involve fraud. For example, perhaps respondent scanned the wrong Department of Motor Vehicles registration paperwork prior to performing the smog inspection. Or the vehicle had a car

door that had been replaced, and respondent scanned the VIN bar code on that door. Or the computer simply made an error. Respondent argued that he did not engage in fraud, he simply failed to confirm that the VIN bar code he scanned matched the car he was inspecting.

Respondent's arguments are not persuasive. One of the vehicles respondent used to clean plug was a vehicle that respondent owned through his used car dealership and on which he had previously performed a smog inspection. (Factual Finding 15.) Another two vehicles respondent had already tested at Pro Smog, one of which was tested on the same day.

20. Respondent also argued that the public would be adequately protected if respondent were subject to a probationary period and the Bureau were to install a "certificate blocking" mechanism in respondent's BAR-OIS system to prevent clean plugging. Certificate blocking prohibits a certificate from being issued to a car where the scanned data from the VIN barcode does not match the data of the vehicle connected to the DAD. When asked, however, Mr. Bryant, the Bureau's representative, was not familiar with certificate blocking, or whether it is readily available and effective.

21. The Bureau has produced Disciplinary Guidelines (Guidelines) to apply to determine the appropriate level of discipline. The Guidelines suggest that matters in aggravation and mitigation be considered. Here, respondent had one prior incident that led to discipline of his smog check inspector license and smog check, test only, station license. He complied with the orders in those citations. He was also cooperative with Mr. Bryant during the investigation. No evidence was presented regarding additional violations following the date of the Accusation. Respondent did not testify or submit mitigating evidence, however. Respondent performs a high volume of smog inspections. While four instances of clean plugging are not a large percentage of his business, he has nevertheless deprived the public of the protections that the smog testing program provides.

22. Complainant now seeks revocation of respondent's ARD registration, smog check, test only, station license, and his smog check inspector license. In seeking revocation, complainant points to respondent's disciplinary history that includes two citations as well as the current violations.

23. Applying the Guidelines to the violations alleged and proved herein, the appropriate discipline is a probationary period and actual suspension of respondent's licenses. The above matters have all been considered in determining that it would not be contrary to the public interest for respondent to continue automotive repair and smog inspection activities on a probationary basis with appropriate terms and conditions.

Costs

24. Complainant requested that respondent be ordered to pay costs it incurred for investigation in the total amount of \$6,776.72. Complainant also requested that respondent be ordered to pay costs it incurred for the legal work performed by the Attorney General's

Office in this matter in the total amount of \$2,560. The reasonableness of the cost bill is discussed in Legal Conclusion 15 below.

LEGAL CONCLUSIONS

Burden of Proof

1. 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.

Statutes and Regulations

2. The Legislature has declared that California's Motor Vehicle Inspection Program (Program), Health and Safety Code section 44000 et seq., requires an "enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven." (Health & Saf. Code, § 44001, subd. (b)(5)(E).) The Director of Consumer Affairs (director) has all of the powers and authority granted under the Automotive Repair Act for enforcing the Program; the Program is enforced and administered by the chief of the Bureau of Automotive Repairs. (Health & Saf. Code, §§ 44001.5, 44002.)

3. Business and Professions Code section 9884.7 provides in pertinent part:

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

(1) Making or authorizing in any manner or by any means whatever 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.

[¶] ... [¶]

(4) Any other conduct that constitutes fraud.

4. Pursuant to Health and Safety Code section 44072.2, the director may suspend, revoke, or take other disciplinary action against a license if the licensee 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.

5. A smog test “shall be performed in accordance with procedures prescribed by the department. . . .” (Health & Saf. Code, § 44012; Cal. Code Regs. tit. 16, § 3340.42.) A smog check technician shall inspect, test and repair vehicles, as applicable, in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).) A smog check station’s license or a qualified smog check technician’s qualification may be suspended or revoked by the Bureau, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. (Health & Saf. Code, § 44035, subd. (a).)

6. A licensed smog check station shall not issue a certificate of compliance to any vehicle that has not met the requirements of Health and Safety Code section 44012. (Health & Saf. Code, § 44015, subd. (b).) 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. . . .” (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

Causes for Discipline

7. Complainant established cause for discipline against respondent’s ARD license pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), by reason of the matters set forth in Factual Findings 12 through 15. Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading.

8. Complainant established cause for disciplining respondent’s ARD license pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), by reason of the matters set forth in Factual Findings 12 through 15. Complainant established that

respondent knew, particularly regarding Vehicle 4, that the vehicles he was performing the smog inspection on were not the vehicles that he connected to the DAD and BAR-OIS.

9. Complainant established cause for disciplining respondent's smog check, test only, station license and his smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (a), by reason of the matters set forth in Factual Findings 12 through 15. Respondent failed to comply with provisions of the Motor Vehicle Inspection Program. (Health & Saf. Code, §§ 44012, 44015; Cal. Code Regs., tit. 16, §§ 3340.35, subd. (c) and 3340.42.)

10. Complainant established cause for disciplining respondent's smog check, test only, station license and his smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (c), by reason of the matters set forth in Factual Findings 12 through 15. Respondent failed to comply with provisions of California Code of Regulations, title 16. (Cal. Code Regs., tit. 16, §§ 3340.35, subd. (c), 3340.42.)

11. Complainant established cause for disciplining respondent's smog check, test only, station license and his smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (d), by reason of the matters set forth in Factual Findings 12 through 15. Respondent committed a dishonest or deceitful act by issuing a smog certificate of compliance to Vehicles 1 through 4 without ensuring that a bona fide inspection was performed of the emission control devices and systems.

12. Respondent's conduct in clean plugging four vehicles deprived the public of the protections the Bureau's smog check program provides. Respondent and Pro Smog each have one prior citation. There was no evidence of additional misconduct following the events that led to the Accusation. Under all of the facts and circumstances, it would not be contrary to the public interest to permit respondent to retain its auto repair dealer registration, smog check, test only, license, and smog check station license, subject to probationary terms and conditions. Pursuant to the Guidelines, probation should be for five years, and respondent's licenses suspended for 15 days.

Discipline of Other Licenses

13. Under Health and Safety Code section 44072.8, the suspension or revocation of a smog check station license or smog technician license constitutes cause to suspend or revoke other such licenses held by the disciplined licensee. Accordingly, if the smog check station license issued to respondent, as owner of Pro Smog, is disciplined, respondent's technician license may also be disciplined.

14. Business and Professions Code section 9884.7, subdivision (c), provides that "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."

Costs

15. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and enforcement of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

In support of its request for costs, complainant submitted the Certification of Prosecution Costs: Declaration of Phillip Arthur (Declaration), signed by Mr. Arthur on February 22, 2018. The Declaration incorporated the Department of Justice's (DOJ's) "Matter Time Activity by Professional Type," which indicates that DOJ has billed the Board a total of \$2,560 for time spent working on this matter. Complainant also submitted a Declaration of Derek Bryant, which Mr. Bryant signed on February 21, 2018. Mr. Bryant's declaration incorporated the Bureau's "Case Hours and Costs Spreadsheet, which indicates that the Bureau spent \$6,776.72 investigating this matter.

As set forth in Factual Finding 24, complainant seeks \$9,336.72 for the costs of investigation and enforcement in this matter. When all the factors set forth in *Zuckerman* are considered, the cost amount is reasonable. Respondent may make periodic payments pursuant to a schedule to be determined by the Bureau.

ORDER

1. Automotive Repair Dealer Registration Number ARD 280040, issued to Pro Smog, Hassan Alrawashdeh, Owner, is revoked.
2. Smog Check, Test Only, Station License Number 280040 issued to Pro Smog, Hassan Alrawashdeh, Owner, is revoked.
3. Smog Check Inspector License Number EO 637726, issued to Hassan Alrawashdeh, is revoked.
4. The above registration and license revocations, however, are stayed, and respondent is placed on probation for five years, subject to the following terms and conditions:

- a) Automotive Repair Dealer Registration Number ARD 280040, issued to Pro Smog, Hassan Alrawashdeh, Owner, is suspended for 15 consecutive days beginning on the effective date of the Decision and Order.
- b) Smog Check, Test Only, Station License Number 280040 issued to Pro Smog, Hassan Alrawashdeh, Owner, is suspended for 15 consecutive days beginning on the effective date of the Decision and Order.
- c) Smog Check Inspector License Number EO 637726, issued to Hassan Alrawashdeh, is suspended for 15 consecutive days beginning on the effective date of the Decision and Order.
- d) Obey All Laws. During the period of probation, respondent shall comply with all federal and state statutes, regulations and rules governing all Bureau registrations and licenses held by respondent.
- e) Quarterly Reporting. During the period of probation, respondent shall report either by personal appearance or in writing as determined by the Bureau on a schedule set by 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.
- f) Report Financial Interests. Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation, report any financial interest which any respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.
- g) Access to Examine Vehicles and Records. Respondent shall provide Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide Bureau representatives unrestricted access to all records pursuant to Bureau laws and regulations.
- h) Tolling of Probation. If, during probation, respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time

of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

i) Violation of Probation. If respondent 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 the decision. Once respondent is served notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

j) Maintain Valid License. Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau, including any period during which suspension or probation is tolled. If respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by respondent within 30 days of that date. If respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

k) Cost Recovery. Respondent shall pay the Bureau of Automotive Repair \$9,336.72 for the reasonable costs of the investigation and enforcement of case No. 79/16-13138. Respondent shall make such payment according to a payment schedule promulgated by the Bureau, to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/16-13138. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The Bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

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

m) License Surrender. Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be vacated. Such request shall be made in writing to the Bureau. The Director and the Bureau Chief reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

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

n) Training Courses. During the period of probation, respondent shall attend and successfully complete a Bureau-specified and Bureau-approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

Within 60 days of the effective date of a decision, respondent shall attend a Write It Right presentation provided by a Bureau Representative, at the location, date, and time determined by the Bureau.

o) Notification to Employer. When performing services that fall within the scope of his or her license, respondent shall provide each of his or

her current or future employers a copy of the decision and the underlying Accusation or Statement of Issues before commencing employment. Notification to respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to the Bureau, upon request, satisfactory evidence of compliance with this term of probation.

p) Restriction on inspecting vehicles requiring Smog Check certification at a STAR station. Respondent shall not be permitted to issue certificates of compliance for any vehicles requiring Smog Check certification at a STAR station for their biennial Smog Check pursuant to Section 44010.5 or 44014.7 under the Health and Safety Code.

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

DATED: March 27, 2018

DocuSigned by:
Heather M. Rowan
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HEATHER M. ROWAN
Administrative Law Judge
Office of Administrative Hearings