BEFORE THE DIRECTOR OF THE

DEPARTMENT OF CONSUMER AFFAIRS

BUREAU OF AUTOMOTIVE REPAIR

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SARKIS ZIRETSYAN- OWNER, dba AUTO NARBIX TEST ONLY STATION

7310 Van Nuys Blvd. Suite 3

Van Nuys, CA 91405

Automotive Repair Dealer Registration No. ARD 288469

Smog Check Test Only Station License No. TC 288469

and

SARKIS ZIRETSYAN

13501 Gilmore Street

Van Nuys, CA 91401

Smog Check Inspector License No. EO 636726

Respondents.

Case No. 79/22-16035

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OAH No. 2023080721

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on JULY 9, 2024.

IT IS SO ORDERED May 15, 2024.

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

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

In the Matter of the Accusation Against:

SARKIS ZIRETSYAN—OWNER, DBA AUTO NARBIX TEST ONLY STATION,

Automotive Repair Dealer Registration No. ARD 288469

Smog Check Test Only Station License No. TC 288469

AND

SARKIS ZIRETSYAN,

Smog Check Inspector License No. EO 636726

Respondents.

Agency Case No. 79/22-16035

OAH No. 2023080721

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 19 through 21, 2024, by video conference.

Kevin J. Rigley, Deputy Attorney General, represented Complainant.

Sarkis V. Paronyan represented Respondent Sarkis Ziretsyan, who appeared during all days of the hearing.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on March 21, 2024.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Patrick Dorais instituted and maintained this action in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

2. On September 11, 2017, the Bureau issued Automotive Repair Dealer Registration Number ARD 288469 to Respondent Sarkis Ziretsyan, doing business as Auto Narbix Test Only Station. Respondent operates the business at a location in Van Nuys, California (facility). The ARD registration was in effect at the times relevant to this matter. It is set to expire on September 30, 2024.

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3. On September 25, 2017, the Bureau issued Smog Check, Test Only license number TC 288469 to Respondent. That license was in effect at the times relevant to this matter and is set to expire on September 30, 2024.

4. Respondent's Smog Check, Test Only station is also certified as a STAR Station and has been since October 25, 2017. The STAR certification will remain active unless the ARD registration and/or Smog Check Station license is revoked, cancelled, the licenses become delinquent, or the certification is suspended.

5. On April 7, 2014, the Bureau issued Smog Check Inspector license number EO 636726 to Respondent. It was in effect at the times relevant to this matter, and it is scheduled to expire on November 30, 2025.

6. After receipt of the Accusation Respondent filed a Notice of Defense and this proceeding ensued. All jurisdictional requirements have been met.

Smog Test Procedures, Generally

7. The state's Smog Check Program requires vehicle owners to have their vehicles inspected and to pass a smog check inspection on a bi-annual basis, when renewing the vehicle's registration. An inspection is also mandated when a vehicle's title is transferred. The inspections must be performed at facilities licensed by the Bureau and conducted by Bureau-licensed smog check technicians. The Smog Check Program is intended to reduce air pollution by finding vehicles whose output of pollutants exceeds certain levels and calling for repair of such vehicles.

8. Computers are utilized by vehicle manufacturers to manage the operation of a vehicle's engine and the transmission, and they play a key role in causing the vehicle to run as smog-free as possible. The computers are programmed

with an On-Board Diagnostic Inspection System (OIS). If some aspect of the engine performance is not as it should be, the OIS causes the "trouble light"—the light on the dashboard that says "check engine" to the driver—to illuminate. The OIS plays a role in smog checks.

9. Part of the smog test for most gasoline powered vehicles built after 1999 requires the smog test inspector to retrieve information from the tested vehicle's on-board computer. When that information is retrieved, it is relayed to a data base maintained by the Bureau. The information retrieved from the on-board computer will indicate to the testing system whether the vehicle is operating so that it will comply with applicable emissions requirements. This testing mode has for the most part superseded the prior test method, known as BAR-97, which tests exhaust pipe emissions while the vehicle is operated on a dynameter, although the BAR-97 is still used on vehicles built before 1999.

10. (A) Beginning in March 2015, the Bureau prescribed that the testing process on most vehicles (and as a practical matter most gasoline powered cars) constructed after 1999 be performed, in part, with the On Board Diagnostics Generation II (OBDII) functional test. In that test the licensed inspector connects a cable from the smog check station's test computer to a Diagnostic Link Connector (DLC), which is a plug found inside the vehicle's passenger cabin. A device known as the DAD—Data Acquisition Device—a scan tool that retrieves information from the vehicle's on-board computer, ties the cables together. The information collected is transmitted through the test system to the Bureau's Vehicle Information Database, known as the VID.

(B) An important piece of information obtained from the vehicle during this process is usually the "eVIN," the Vehicle Identification Number (VIN) in electronic

form. The eVIN should match the VIN stamped on a metal badge that is typically affixed to the top of the vehicle's dashboard in front of the driver, visible through the windshield. (A vehicle's VIN may be found in other locations, such as a label on the door post.) Although some cars built between 2000 and 2005 do not transmit an eVIN, the majority do so, and the capacity to transmit the eVIN was mandated for cars built after 2005.

(C) Another piece of the electronically-retrieved information is a communication protocol, or communication interface, which is identified by a combination of letters and numbers that indicate a particular system whereby the car's computer will communicate with the station's test computer. A third type of data collected by the system is a parameter identification (PID) count. This refers to the number of data points transmitted from the tested vehicle. The data may include, for example, the engine speed and temperature and other data used by the vehicle's computer system to check for proper engine performance and compliance with smog regulations. Each vehicle reports a specific known PID count, with occasional slight variations, programmed during the manufacture of the vehicle. Other information not pertinent to this matter can be obtained, such as whether a particular oxygen sensor or catalytic converter is malfunctioning, or whether the evaporative system is being supported.

11. Regardless of the test system utilized, the inspector must perform visual and functional tests on the vehicle in question. The visual inspection is to verify that the required emission control devices are on the vehicle and properly connected. The functional tests vary from vehicle to vehicle, but may include checking the Exhaust Gas Recirculation system, or pressure testing the gas cap.

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12. In some circumstances, dishonest smog check inspectors and test center operators engage in the illegal practice of "clean plugging." In those cases, the vehicle ostensibly being tested is not connected into the test system, and might not even be in the facility. Instead, the test equipment is either plugged into another vehicle, or into a simulator which produces data roughly of the type that should be communicated from the vehicle ostensibly being tested.

13. When clean plugging occurs, it leaves an electronic trail in the VID. Primarily this is because the PID counts and the communication protocol data transmitted in these circumstances do not match that transmitted by hundreds of other cars of the same make and model as the car that is ostensibly being tested. And, in many cases, the eVIN will not be transmitted, or will be incorrect.

The Subject Inspections

14. Between March 11, 2022, and September 27, 2022, Respondent conducted five smog inspections on four vehicles. (One of the vehicles was tested twice, but will be identified as if separate vehicles. The vehicles will sometimes hereafter be referred to as the five subject vehicles and the tests as the five subject tests.) All five tests produced anomalous results, which results indicated that the tests were the product of clean plugging. Respondent conducted all five of the subject tests at his facility, and in each instance caused a Certificate of Compliance to be issued when one should not have been issued. (The Certificate of Compliance is transmitted to the Bureau and the Department of Motor Vehicles.)

15. Beginning in October 2022, Bureau employee Mark Casillas, an experienced Program Representative III, reviewed data transmitted from Respondent's facility to the VID. He found similar anomalous data had been transmitted during each

of the five subject tests. Casillas reviewed data in the VID that had been transmitted during tests of cars similar to the five subject vehicles, and in each case found the similar vehicles transmitted PID counts and used test protocols that were not found in the five subject tests. Further in each of the five subject tests the VIN was transmitted electronically, but should not have been transmitted in three of the five subject tests. The eVIN was the same in all five tests, and was the VIN for a car other than that ostensibly being tested.

16. When reviewing the data transmitted electronically to the VID during the tests of numerous vehicles of the same make and model as the subject vehicles, in 99 percent of those tests, the same PID count was transmitted, and the same protocol was utilized. Three of the similar vehicles did not report an eVIN, while two of the vehicles routinely reported the eVIN.

VEHICLE NUMBER 1: 2003 TOYOTA RAV 4

17. On March 11, 2022, Respondent purported to test a 2003 Toyota RAV4, a vehicle whose VIN ends in 1852. Test data for this vehicle showed an eVIN was transmitted, the number ending in 8851. The communication protocol was transmitted as ICAN11bt5, and the PID count was 34.

18. Casillas reviewed information in the VID and found test data from 206 other 2003 Toyota RAV4's. In 99.5 percent of those tests, those cars did not transmit an eVIN, they reported a PID count of 21, and they used communication protocol I914, differing from the data transmitted by Vehicle number 1 when tested by Respondent.

19. Vehicle number 1 had previously been smog tested on September 25, 2019, at a different test facility. Data from that earlier test showed no eVIN was transmitted by Vehicle number 1, the PID count was 21, and the communication

protocol was I914. This was consistent with virtually all the 206 RAV4s described in Factual Finding 18, and inconsistent with the information gleaned from Respondent's test of the vehicle.

20. The eVIN transmitted during Respondent's test of Vehicle number 1 is that of a 2006 Toyota Scion (Scion), which vehicle was then owned by Respondent. Data from the VID shows Respondent smog tested the Scion on April 4, 2022, at his facility. The Scion transmitted an eVIN ending in 8851, it used communication protocol ICAN11bt500, and transmitted a PID count of 34.

21. Respondent caused a Certificate of Compliance to be issued for Vehicle number 1 by clean plugging, using his own vehicle as a substitute vehicle.

VEHICLE NUMBER 2: 2005 CHEVROLET SILVERADO C1500

22. On June 22, 2022, Respondent tested a 2005 Chevrolet Silverado C1500 at his smog check station. That vehicle had no license plate, and its VIN ended in 4676. However, the test data showed that an eVIN was transmitted which ended in the numerals 8851, and the communication protocol was ICAN11bt5. The PID count was 34. The eVIN was that of Respondent's Toyota Scion, and the communication protocol and PID count was consistent with that transmitted by Respondent's Scion. (Factual Finding 20.)

23. A review of data in the VID, generated from the testing of 1,000 other 2005 Chevrolet Silverado C1500 vehicles, showed that 99.9 percent of those vehicles transmitted an eVIN, and they utilized communication protocol JVPW. Those vehicles showed a PID count of 22.

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24. Consistent with the data for similar 2005 Chevrolet Silverado's was the data generated in a February 15, 2021, test of Vehicle number 2 at another facility. On that earlier date an eVIN was transmitted which ended in the numerals 4676, the communication protocol was JVPW, and the PID count was 22. The latter data points were consistent with 99.9 percent of 1,000 similar vehicles, and inconsistent with the data generated by Respondent's test of the vehicle.

25. Respondent caused a Certificate of Compliance to issue for Vehicle number 2, when it was clean plugged.

VEHICLE NUMBER 3: 2001 NISSAN ALTIMA XE

26. On July 15, 2022, Respondent conducted a smog test of a 2001 Nissan Altima XE (Altima), at his smog check station, and he issued a Certificate of Compliance for that vehicle. The VIN for this vehicle ends in the numerals 5408.

27. The test data showed that an eVIN was transmitted which ended in the numerals 8851, and the communication protocol was ICAN11bt5. The PID count was 34. The eVIN was that of Respondent's Toyota Scion, and the communication protocol and PID count was consistent with that transmitted by Respondent's Scion. (Factual Finding 20.)

28. Similar test data for 1,000 Altima's such as Vehicle number 3 show that 99.6 percent of those vehicles do not transmit an eVIN; they utilize communication protocol I914, and they transmit a PID count of 18.

29. Data in the VID established that on February 2, 2021, Vehicle number 3 underwent a smog test at another facility. At that time, the vehicle did not transmit an eVIN, and the communication protocol was I914. The PID count was 18. This was

consistent with the data transmitted by the nearly 1,000 Altima's described in Factual Finding 28, and inconsistent with the data generated by Respondent's test of Vehicle number 3.

30. Respondent caused a Certificate of Compliance to issue for Vehicle number 3, when it was clean plugged.

VEHICLE NUMBER 4: 2001 TOYOTA RAV4

31. On September 26, 2022, Respondent conducted a smog test of a 2001 Toyota RAV4 at his smog check station, and he issued a Certificate of Compliance for that vehicle. The VIN for this vehicle ended with the numerals 0016.

32. The test data showed that an eVIN was transmitted which ended in the numerals 8851, and the communication protocol was ICAN11bt5. The PID count was 34. The eVIN was that of Respondent's Toyota Scion, and the communication protocol and PID count was consistent with that transmitted by Respondent's Scion. (Factual Finding 20.)

33. Test data from the VID for 103 other 2001 RAV4's showed that 99 percent of those similar vehicles did not transmit an eVIN, they communicated with I914 protocol, and the PID count was 21.

34. On November 6, 2020, vehicle number 4 was tested at another test facility. The test data from that prior test established that the vehicle did not transmit an eVIN, the communication protocol was I914, and the PID count was 21. This was consistent with the similar vehicles described in Factual Finding 33, and inconsistent with the information generated during Respondent's test of Vehicle number 4.

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35. Respondent caused a Certificate of Compliance to issue for Vehicle number 4, when it was clean plugged.

VEHICLE NUMBER 5: 2005 CHEVROLET SILVERADO C1500

36. On September 27, 2022, Respondent tested a 2005 Chevrolet Silverado C1500 at his smog check station. That vehicle had no license plate, and its VIN ended in 4676; it was the same vehicle as Vehicle number 2. However, the test data showed that an eVIN was transmitted that ended in the numerals 8851, and the communication protocol was ICAN11bt5. The PID count was 34. The eVIN was that of Respondent's Toyota Scion, and the communication protocol and PID count was consistent with that transmitted by Respondent's Scion. (Factual Finding 20.)

37. As found in Factual Finding 23, data in the VID, generated by 1,000 other 2005 Chevrolet Silverado C1500 vehicles, showed that 99.9 percent of those vehicles transmitted an eVIN, and they utilized communication protocol JVPW. Those vehicles showed a PID count of 22.

38. As found in Factual Finding 24, the data generated in a February 15, 2021, test of this vehicle at another facility showed an eVIN was then transmitted which ended in the numerals 4676, and the communication protocol was JVPW. The PID count was 22. These data points were consistent with 99.9 percent of 1,000 similar vehicles, and inconsistent with the data transmitted by Respondent's test of the vehicle.

39. Respondent caused a Certificate of Compliance to issue for Vehicle number 5, when it was clean plugged.

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Respondent's Case

40. In essence, Respondent blamed malfunctioning test equipment for providing the anomalous test data to the VID in the five subject tests. He admitted that on several occasions he ran testing on his Scion, but insisted he did so to attempt to see why his test system was not reading engine RPM for vehicles that he was attempting to test. Respondent adduced testimony from a manager of the firm that rents Respondent his testing equipment, to the effect that Respondent has brought equipment problems to that firm's attention. Respondent offered evidence of his good character as well.

41. Mark Rebullar was called as a witness for Respondent. Rebullar is an assistant manager at Opus Inspection, which rents test equipment to Respondent and it services such equipment. He is not an engineer, instead being a service person. He has worked for Opus for about 18 years.

42. Rebullar, pursuant to a subpoena, produced records from his employer which indicated that during the past two years Opus has replaced nearly every component in Respondent's OIS system, including the computer, the DAD and connecting cables. Some of those components have been replaced more than once in the approximately two years prior to the hearing.

43. Respondent has communicated two main issues to Rebullar. One was a problem obtaining an RPM read out from some vehicles when Respondent was testing those vehicles; at some point the RPM would be indicated as zero while the vehicle's engine was running. And Respondent raised the issue where the vehicle's eVIN as reported to the pretest program did not match that on the vehicle itself.

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44. Rebullar acknowledged on cross examination that Respondent mainly communicated about problems with the RPM read out. The witness could recall only one other shop having a similar issue. He had never heard of VIN problems at other shops.

45. Respondent testified on his own part, recounting his history as a smog check inspector. He went into auto repair when he graduated from high school, and he has been licensed for approximately nine years. He opened his shop about seven years ago. He has no history of discipline, and no citations, and denied having any consumer complaints. He testified he supports his wife and mother by operating his business, and he and his wife have considerable medical expenses.

46. Respondent described his issues with his test equipment and his efforts to get help from Opus. It appears from his descriptions of the issues that the main problem was with RPM read outs, where test equipment showed zero RPM when the engine was running. He recounted that on some occasions he could not complete tests because of the inability to obtain an RPM readout, and he sometimes had to send the vehicles to a smog referee. According to Respondent, problems with RPM readings occurred when working with 2000 to 2003 RAV4's, with 2000 to 2005 Chevrolet Silverado's, and early 2000's Nissans and Ford vans.

47. Respondent testified about the subject tests. As to the test of Vehicle 1, he described that he started the test and the RPM readout showed zero when the car was running. He exited from the test and ran a pretest program on the customer's vehicle and on his own, in an attempt to ascertain whether there was a problem in the test equipment or with the car. According to Respondent, there were no issues with either vehicle, so he restarted the test, was able to obtain a reading on the engine RPM, and so he tested and passed the RAV4. He contacted Opus about the problems.

48. Respondent testified to similar issues, and similar steps, in connection with his tests of Vehicles 2, 3, 4, and 5. In each instance he attested to pretesting the customer's vehicle and his own, once there was a problem with the RPM readout. When he went to retest the vehicles, they passed. He also described his efforts to obtain help from Opus. He testified that the DAD was replaced more than once during a period of several months.

49. Respondent testified that he had plugged his vehicle into the system during a pretest phase but denied doing so during the actual tests.

50. Respondent called witnesses who attested to his good character, and he adduced sworn statements from others to that effect. One witness, Ivan Mejia, operates a repair facility next door to Respondent's shop; they have been "neighbors" for about 20 months. He attested to Respondent's good character, and testified he has seen, on two occasions, Respondent's equipment displaying a VIN that did not match the one on the vehicle. Mejia, who does not conduct smog tests, testified he has seen a scanned VIN not match the VIN on a vehicle a few times in his career which spans over 12 years.

51. Alfredo Hernandez owns the Altima, Vehicle number 3. He works at a business near Respondent's facility. He recounted taking his car to Respondent for a smog test some two years ago. Hernandez recalled that during the test, he was at the facility when Respondent told him the test might take longer than expected because Respondent was having trouble with his test equipment, and that he might have to check the test equipment out with another vehicle. Hernandez denied asking Respondent to do an improper test.

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Complainant's Rebuttal Case

52. Complainant called Jonathon Gee in rebuttal. Gee is a Senior Air Quality Engineer with the Bureau. He has worked for the Bureau for approximately 23 years, with a five-year stint in private industry as well. He holds bachelor's and master's degrees in mechanical engineering and has one year of post-graduate studies in computer science. He is wholly familiar with OIS, having been one of the principal engineers who wrote the specifications for the system. He certified the DAD. Gee heard the case in its entirety, and he reviewed the evidence.

53. In Gee's opinion the wrong vehicle was plugged in to the test system during the five subject tests, that wrong vehicle being Respondent's Scion. He pointed out that the pretest is a separate piece of software not developed or approved by the Bureau. He was clear that such a separate piece of software could not place information into the VID, due to security features in the Bureau's software. In his opinion the idea that such a separate program could put data in the VID is outlandish.

54. Gee pointed out that the Bureau does not manufacture the test gear, Opus does. Their equipment had been tested by the Bureau. He noted that the DAD, which is used by both the OIS and pretest programs, had been replaced several times. As to a BMW that Respondent showed to have an eVIN that did not match the VIN on the vehicle, it has likely had an equipment replacement which would explain the discrepancy.

COSTS

55. The Bureau has incurred costs in the investigation and prosecution of this matter. Total billing from the Department of Justice was $10,848.75. The Bureau's

investigation costs were $1,446.39. The total costs are $12,295.14, which are reasonable on their face.

LEGAL CONCLUSIONS

Legal Conclusions of General Applicability

1. Jurisdiction to proceed in this matter exists under Business and Professions Code section 9884.7 (which relates to ARD registrations), as well as Health and Safety Code sections 44002 and 44072.2 (which relate to smog check station and inspector licenses), based on Factual Findings 1 through 6. The expiration of any licenses does not bar the agency from asserting jurisdiction. (Bus. & Prof. Code, §§ 118, subd. (b), and 9884.13; Health & Saf. Code, § 44072.6.)

2. Under Business and Professions Code section 9884.7, subdivision (a), the registration of an automotive repair dealer can be disciplined "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," including making or authorizing a written statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading (subdivision (a)(1)), or any other conduct that constitutes fraud (subdivision (a)(4)).

3. Under Health and Safety Code section 44072.10, subdivisions (a) and (c), a smog check station license or a smog inspector's license can be disciplined based on reasonable evidence of fraud and willful violation of the law, and the licenses can be

revoked for fraudulently certifying or participating in the fraudulent certification or inspection of a vehicle.

4. Under Health and Safety Code section 44072.2, subdivisions (a), (c) and (d), the licenses of a smog check station and a smog check inspector can be disciplined for violating any statutes or regulations related to the license, or for committing any act involving dishonesty, fraud, or deceit whereby another is injured.

5. Under Business and Professions Code section 9889.9, if any license issued by the Bureau under that part of the Code is disciplined, any other licenses issued by the Bureau may be disciplined.

Dispositve Legal Conclusions

6. Cause has been established to discipline Respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that Respondent made untrue or misleading statements in issuing Certificates of Compliance in the five subject tests. This Conclusion is based on Factual Findings 7 to 39 and 52 through 54.

7. Cause has been established to discipline Respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for fraud in the issuance of the Certificates of Compliance in the five subject tests. This Conclusion is based on Factual Findings 7 to 39 and 52 through 54.

8. (A) Respondent violated Health and Safety Code section 44012 by failing to ensure that emission control tests were performed on the five subject vehicles in accordance with procedures prescribed by the Department, based on Factual Findings 7 to 39 and 52 through 54.

(B) Respondent violated Health and Safety Code section 44015, subdivision (b), by issuing Certificates of Compliance for the five subject vehicles without properly testing them to determine if they complied with Health and Safety Code section 44012. This Conclusion is based on Factual Findings 7 to 39 and 52 through 54.

9. Cause exists to discipline Respondent's station license because he violated Health and Safety Code section 44072.2, subdivisions (a), by his violations of provisions of the Health and Safety Code, based on Legal Conclusions 8(A) and 8(B), and their factual predicates.

10. (A) Respondent violated California Code of Regulations, title 16 (CCR), section 3340.24, subdivision (c), by falsely or fraudulently issuing the Certificates of Compliance for the five subject vehicles, based on Factual Findings 7 to 39 and 52 through 54.

(B) Respondent violated CCR section 3340.35, subdivision (c), by issuing the Certificates of Compliance for the five subject vehicles, because the vehicles had not been inspected in accordance with Health and Safety Code section 3340.2, based on Factual Findings 7 to 39 and 52 through 54.

(C) Respondent violated CCR section 3340.41, subdivision (c), by entering false information into the Bureau's data base while testing the five subject vehicles, based on Factual Findings 7 to 39 and 52 through 54.

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(D) Respondent violated CCR section 3340.42 by failing to conduct the smog tests on the five subject vehicles in accordance with Bureau specifications, based on Factual Findings 7 to 39 and 52 through 54.

11. Cause exists to discipline Respondent's station license because he violated Health and Safety Code section 44072.2, subdivision (c), by his violation of applicable regulations, based on Legal Conclusions 10(A) through 10(D), and their factual predicates.

12. Cause exists to discipline Respondent's station license, because he violated Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), by his dishonest and fraudulent behavior, based on Factual Findings 7 to 39 and 52 through 54.

13. Cause exists to discipline Respondent's technician's license, because he violated Health and Safety Code section 44072.2, subdivision (c), by his violation of applicable regulations, based on Legal Conclusions 10(A) through 10(D), and their factual predicates.

14. Cause exists to discipline Respondent's technician's license, because he violated Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10, subdivision (c), by his dishonest and fraudulent behavior, based on Factual Findings 7 to 39 and 52 through 54.

15. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the Bureau may refuse to validate or may invalidate the registrations of any other places of business operated by Respondent, based on Legal Conclusions 6 and 7 and their factual predicates.

16. Pursuant to Health and Safety Code 44072.8, if Respondent's smog check station license is suspended or revoked, any other license issued to him under Chapter 5 of Part 5 of Division 26 of that code may be suspended or revoked.

17. Pursuant to Health and Safety Code 44072.8, if Respondent's smog check inspector's license is suspended or revoked, any additional license issued to him under Chapter 5 of Part 5 of Division 26 of that code may be suspended or revoked.

18. (A) The Bureau is entitled to recover costs pursuant to Business and Professions Code section 125.3. The reasonable amount of those costs is $12,295.14, based on Factual Finding 55.

(B) The California Supreme Court has established guidelines for determining whether costs should be assessed in the context of the circumstances of each case. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) The Board must consider the licensee's subjective good faith belief in the merits of his position, whether the respondent raised a colorable defense or obtained dismissal of some charges or a reduction in the severity of the discipline imposed, and the licensee's ability to make payment. (*Id.* at p. 45.) Here Respondent testified to having considerable expenses, as he supports his mother and his wife, and he has significant medical debt. It is fairly inferred that Respondent, whose license is being revoked, would have difficulty paying costs in the foreseeable future. The order that follows will require Respondent to pay costs if and when he can obtain reinstatement of any of his licenses.

Disposition

19. The purpose of proceedings of this type is to protect the public, not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; Bus.

& Prof. Code, § 9880.3.) The weight of the evidence establishes Respondent used his own vehicle to supply passing data in five tests conducted over approximately six months. His case that there is a problem with the test equipment mainly showed some issues with RPM read out in some tests. However, he could not explain how his car's eVIN, language protocol identification, and PID count entered the VID, while the Bureau's rebuttal witness made it clear that the Scion's data could not somehow migrate from the pretest program to the VID. Respondent's defense has him in a posture of not accepting responsibility for issuing five false Certificates of Compliance which posture does not support a probationary order. Plainly, clean (as possible) running motor vehicles are necessary to the health and safety of California's citizens. In this case, public protection requires revocation of Respondent's ARD registration and other licenses.

ORDER

1. Automotive Repair Dealer Registration Number ARD 288469, held by Respondent Sarkis Ziretsyan, doing business as Auto Narbix Test Only Station, is hereby revoked.

2. Smog Check, Test Only license number TC 288469, held by Respondent Sarkis Ziretsyan, is hereby revoked.

3. Smog Check Inspector license number EO 636726, held by Respondent Sarkis Ziretsyan, is hereby revoked.

4. The STAR Certification held by Respondent's Test Only station is hereby revoked.

5. If any of Respondent's licenses are reinstated or if similar licenses are issue to him in the future, he shall pay the Bureau it costs of $12,295.14, on an installment payment basis, as approved by the Bureau.

DATE: 04/19/2024

Joseph Montoya

JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings