

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

In the Matter of the Accusation Against:

**AASHH CORPORATION INC., DBA MEEKLAND SMOG TEST
ONLY, ABUZAR SAEED, President**

Automotive Repair Dealer Registration No. ARD 291427

Smog Check, Test Only, Station License No. TC 291427

and

JAGTAR SINGH KAHLON,

Smog Check Inspector License No. EO 153981

Smog Check Repair Technician License No. EI 153981

Respondents.

Agency Case No. 79/18-15473

OAH No. 2020010859

PROPOSED DECISION

Administrative Law Judge Linda Pollack, State of California, Office of Administrative Hearings, heard this matter on August 12, 2020, by telephone and video conference.

Deputy Attorney General Laura Pedicini represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair.

Respondent AASHH Corporation, Inc., doing business as Meekland Smog Test Only, was represented by Abuzar Saeed, president, who was appeared at the hearing.¹

The record closed and the matter was submitted on August 12, 2020.

FACTUAL FINDINGS

1. On September 25, 2019, Patrick Dorais brought the accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, (Bureau), against AASHH Corporation Inc., (respondent) doing business as Meekland Smog Test Only (station). Abuzar Saeed is the president of AASHH Corporation, Inc. The accusation alleged that respondent made or authorized untrue or misleading statements, committed fraud, dishonesty or deceit and violated the law by issuing four Certificates of Compliance for vehicles that were never inspected (clean-plugging).

¹ Respondent Jagtar Singh Kahlon did not file a notice of defense and the hearing did not proceed as against him.

Licenses Issued to Respondent

2. On June 20, 2018, the Bureau issued Automotive Repair Dealer, Registration No. ARD 291427, to respondent. The registration was renewed on June 30, 2020.

3. On June 29, 2018, the Bureau issued Smog Check, Test Only, Station License No. TC 291427, to respondent. The license was renewed on June 30, 2020.

4. On October 4, 2018, the Bureau issued STAR Station status to the facility. The STAR Station status was in full force and effect at all times relevant to the accusation charges, and remains active unless the Automotive Repair Dealer registration and/or Smog Check, Test Only Station license is/are revoked, canceled, become delinquent, or certification is invalidated.

5. The Automotive Repair Dealer Registration and the Smog Check, Test Only Station License, were in full force and effect at all times relevant to this accusation.

Smog Check Program and Clean Plugging

6. The Smog Check Program requires the owners of most motor vehicles to subject their vehicles to a smog check inspection and to receive a certificate of compliance every two years when renewing the vehicle's registration and when the vehicle's title is transferred. Inspections are performed by licensed smog check inspectors at licensed smog check stations. The Smog Check Program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles.

7. Beginning in March 2015, smog check inspections of most vehicles are performed pursuant to the Bureau of Automotive Repair-Onboard Inspection Systems (BAR-OIS) protocol. As part of a BAR-OIS inspection, the on-board diagnostic system of the vehicle being tested is connected to the Bureau's database by means of a data acquisition device. All vehicles manufactured after 2005, and many manufactured earlier, have an electronic vehicle identification number (eVIN), which is identical to the vehicle identification number physically present on the vehicle. If the vehicle has an eVIN stored in its computer, the eVIN is transmitted during the BAR-OIS inspection. Vehicles also transmit a communication protocol during the BAR-OIS inspection, which is the "language" used by the vehicle's computer. The protocol is programmed during the manufacturing process and does not change. Vehicles of the same make, model, and year will use the same protocol. A parameter identification (PID) count is also transmitted during a BAR OIS inspection. The PID count is the number of data points reported by the vehicle's computer. Each make, model, and year of vehicle will have an expected PID count (or range of PID counts.) When performing a smog inspection, the technician is required to confirm that the PID, VIN, and protocol, inputted into the BAR-OIS system are correct and match the vehicle being tested.

Clean plugging is the illegal practice of substituting one vehicle for another during the on-board diagnostic portion of a smog inspection. It can be detected when the data transmitted by the vehicle does not match what is expected to be transmitted for that make, model, and year of vehicle.

8. Ian Evans is a Program Representative II. He has been employed by the Bureau for approximately 14 years. Evans analyzed data of smog inspections performed at the station.

9. Based on a review of smog check data, Evans was able to establish that clean plugging occurred on four occasions at the station between the dates of August 13, 2018 and August 18, 2018. His analysis of the data provided by the vehicles' computers during the smog inspections was documented for the four separate instances of clean plugging. In each case, Kahlon, an employee at the station, performed the inspection and issued a certificate of compliance to a vehicle that was not actually inspected.

CLEAN PLUG #1, AUGUST 13, 2018

10. On August 13, 2018, certificate of compliance number QM09534C was issued by the station to a 2005 Cadillac Escalade Luxury. Respondent reported an incorrect eVIN and transmitted communication protocol ICAN1bt5 and a PID count of 46 / 17. The protocol and PID count do not match what is normally transmitted by this make, model, and year of vehicle; the expected protocol is JVPW and the expected PID count is 22. The eVIN reported during this fraudulent inspection belongs to a 2007 Lexus ES350, that was registered to Kahlon.

In July 2017 the Cadillac had been inspected at a different facility and the expected protocol, eVIN and PID count were reported to the Bureau.

CLEAN PLUG #2, AUGUST 13, 2018

11. On August 13, 2018, certificate of compliance number QM095936C was issued by the station to a 2004 Nissan Titan XE. The station reported an incorrect eVIN and transmitted communication protocol ICAN11bt5 and a PID count of 46 / 17. The protocol and PID count do not match what is normally transmitted by this make, model, and year of vehicle; the expected protocol is JVPW and the expected PID count

is 22. The eVIN reported during this fraudulent inspection belonged to a 2007 Lexus ES350, that was registered to Kahlon.

CLEAN PLUG #3, AUGUST 17, 2018

12. On August 17, 2018, certificate of compliance number QM095947C was issued by the station to a 2006 Volkswagen Jetta 2.5 Option Package 1. The station reported an incorrect eVIN, a communication protocol of ICAN11bt5 and a PID count of 46. The PID count did not match what is normally transmitted by this make, model, and year of vehicle; the expected PID count is 38 / 15, 40, 40 / 14, or 40 / 15, not 46.

13. On November 21, 2016 the same 2006 Volkswagen Jetta 2.5 Option Package I, was inspected at a different smog check facility. During that inspection the eVIN was correctly transmitted, the protocol was ICAN11bt5, and the PID count was 40 / 15.

14. OIS Test Data confirmed that a 2010 Toyota Sienna CE, was the vehicle used to generate the smog certificate of compliance for the Volkswagen. Kahlon had inspected and certified the 2010 Toyota Sienna CE at the station that same day.

CLEAN PLUG #4, AUGUST 17, 2018

15. On August 17, 2018, certificate of compliance number QM095949C was issued by the station to a 2000 Ford F150 SVT Lightning. The vehicle reported an incorrect eVIN and transmitted communication protocol ICAN11bt5 and a PID count of 46 / 17. The protocol and PID count do not match what is normally transmitted by this make, model, and year of vehicle; the expected protocol is JPWM and the expected PID count is 20. The eVIN reported during this fraudulent inspection belonged to a 2007 Lexus ES350, that was registered to Kahlon.

Prior Citation History

16. Kahlon received three prior citations from the Bureau during the years 2007 to 2016. He inspected and illegally certified two vehicles that were documented to fail a properly conducted smog check inspection. He also inspected and certified one vehicle using the BAR-97 when the OIS test was required.

Respondent's Contentions

17. Saeed purchased the station in June 2018 as an "experiment" because he likes cars. He does not work at the station but works full-time as an executive, managing a world-wide software team at NXP Inc. When he purchased the station, he did not use a real-estate agent but heard about it from a "friend of a friend." He stated that Kahlon came with the station as the smog technician; he was "part of the deal." Saeed kept Kahlon on, in order to learn the business. He did not research Kahlon's history of citations with the Bureau and was not aware of them. He first found out about Kahlon's prior citations when he received the accusation from the Bureau near the end of September 2019.

18. Saeed does not dispute the allegations in the accusation.

19. Saeed was present at the station on week-ends. He noticed Kahlon's erratic behavior and that he was smoking marijuana and drinking and gave him a warning. Saeed terminated Kahlon on August 10, 2018. Kahlon's last day was August 23, 2018.

20. Saeed denies any knowledge of Kahlon's fraudulent actions. He believes Kahlon committed these acts as retaliation for firing him. Since firing Kahlon, Saeed has hired two new smog technicians with clean backgrounds. Additionally, he made

other changes: he installed cameras in the station and he personally reviews the paperwork on a weekly basis.

21. Saeed described himself as honest, reliable, and law-abiding. He understands that Kahlon's fraudulent actions are his responsibility. He is willing to pay any fines imposed.

Costs

22. Complainant seeks a total of \$8,772.18 in investigation and prosecution costs. The Department of Justice submitted a declaration establishing that legal services, provided through August 10, 2020, amounted to \$8,427.50. Attached to the declaration is a spreadsheet detailing the tasks performed by the Department of Justice. These costs are deemed to be reasonable.

23. In addition, the Bureau submitted two declarations certifying investigation costs in the total amount of \$577.48. California Code of Regulations, title 1, section 1042, provides that an agency's cost declaration "shall describe the general tasks performed [and] the time spent on each task." The Bureau's declarations contain sufficient detail regarding the tasks performed and time spent on these tasks to comply with this regulation. Accordingly, the investigation costs are deemed reasonable.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the allegations in the accusation by the preponderance of the evidence. (*Imports Performance v.*

Department of Consumer Affairs, Bureau of Automotive Repair (2011) 201 Cal.App.4th 911, 916-917.)

First Cause for Discipline (Untrue or Misleading Statements)

2. Business and Professions Code section 9884.7, subdivision (a)(1), authorizes the Bureau to discipline the registration of an automotive repair dealer if it made or authorized statements which it knew, or should have known by the exercise of reasonable care, were untrue or misleading. By untruthfully reporting to the Bureau, between August 13, 2018, and August 18, 2018, that four vehicles, which had been clean plugged, had been properly inspected and by certifying that these vehicles were in compliance, respondent made untrue and misleading statements. Cause exists to discipline respondent's automotive repair dealer registration in light of the matters set forth in Factual Findings 9 through 15 and 18.

Second Cause for Discipline (Fraud)

3. Business and Professions Code section 9884.7, subdivision (a)(4), authorizes the Bureau to discipline the registration of an automotive repair dealer if it commits acts constituting fraud. The four acts of clean plugging which occurred between August 13, 2018, and August 18, 2018, and the issuance of fraudulent certificates of compliance to these vehicles, constituted fraud. Cause exists to discipline respondent's automotive repair dealer registration in light of the matters set forth in Factual Findings 9 through 15 and 18.

Third Cause for Discipline (Failure to Comply with Automotive Repair Act)

4. Business and Professions Code section 9884.7, subdivision (a)(6), and Health and Safety Code section 44072.2, subdivisions (a) and (c), authorize the Bureau to discipline the automotive repair dealer registration and the smog check station license of a licensee who violates rules and regulations governing licensees.

Respondent violated the Bureau's regulations by: failing to ensure that smog inspections were performed in accordance with statutes, regulations and procedures; issuing fraudulent certificates of compliance to vehicles without having performed proper inspections of these vehicles; entering false information into the emissions inspection system; and failing to conduct the required smog tests and inspections on these vehicles. (Health & Saf. Code, §§ 44012, subd. (f), 44015, subd. (b); Cal. Code Regs, tit. 16, §§ 3340.35, 3340.42, and 3373.) Cause exists to discipline respondent's automotive repair dealer registration and smog check station license in light of the matters set forth in Factual Findings 9 through 15 and 18.

Fourth Cause for Discipline (Dishonesty, Fraud, or Deceit)

5. Health and Safety Code section 44072.2, subdivision (d), authorizes the Bureau to discipline the smog check station license of a licensee who commits any act involving dishonesty, fraud, or deceit whereby another is injured. The four fraudulent smog inspections performed at the station involved dishonest, fraudulent, and deceitful acts which caused injury to the People of the State of California. Cause exists to suspend or revoke respondent's smog check station license, in light of the matters set forth in Findings 9 through 15 and 18.

Other Matters

6. Business and Professions Code section 9884.7, subdivision (c), provides that the Bureau may suspend, revoke, or place on probation the registration for all places of business operated in this state by respondent, upon a finding that respondent's automotive repair dealer registration has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

7. Health and Safety Code section 44072.8 provides that if a license is revoked or suspended, any additional license issued in the name of that licensee may also be revoked or suspended.

Discussion

8. Cause for discipline against respondent having been established, the issue is the appropriate discipline to impose.

9. The Bureau has set forth factors to be considered in determining the appropriate discipline in its Disciplinary Guidelines. Factors in aggravation include: prior warnings from the Bureau; prior office conferences with the Bureau; prior history of citations; prior history of formal disciplinary action; evidence that the unlawful act was of a pattern or practice; and evidence of any other conduct which constitutes fraud or gross negligence. Factors in mitigation include: evidence of voluntary participation in retraining; evidence of voluntary purchase of proper diagnostic equipment and manuals; absence of prior disciplinary action; evidence that the violation was not part of a pattern or practice; evidence of retraining and initiation of steps to minimize recurrence; and evidence of substantial measures to correct business

practices and operations so as to minimize the likelihood of recurrence of the violation.

10. The Bureau reviewed data of smog inspections performed at respondent's station and documented clean plugging of four vehicles. These inspections were performed two weeks before this employee's last day of work, as set forth in Factual Findings 9, 19 and 20. Saeed has taken steps to ensure the station complies with the law: he installed cameras in the station, he hired two new smog technicians with no history of discipline by the Bureau and he personally reviews all paperwork generated by the station to make sure all laws are followed.

11. Upon consideration of the record as a whole, it is determined that allowing respondent to keep his license and registration on a probationary basis, subject to appropriate conditions set forth below, including the completion of a training course, will adequately protect the public and impress upon respondent the importance of following the Bureau's required inspection procedures.

Costs

12. Business and Professions Code section 125.3 authorizes the Bureau to recover its reasonable costs of investigation and enforcement. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's 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 to the alleged misconduct. Reduction of costs is not warranted in this case. As set forth in Factual Findings 23 and 24, the Bureau's reasonable costs are \$8,772.18.

ORDER

Automotive Repair Dealer Registration Number ARD 291427, and Smog Check, Test Only, Station License Number TC 291427, both issued to AASHH Corporation Inc., doing business as Meekland Smog Test Only, Abuzar Saeed, President, are revoked. However, the revocations are stayed and the registration and license are placed on probation for five years on the following terms and conditions:

1. Obey All Laws

During the period of probation, respondent shall comply with all federal and state statutes, regulations and rules governing all Bureau of Automotive Repair (BAR) registrations and licenses held by respondent.

2. Quarterly Reporting

During the period of probation, respondent shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, 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.

3. 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 BAR during the period of probation, report any financial interest which respondent may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records

Respondent shall provide BAR 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 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

5. 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 BAR 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 is conducted or performed during the tolling period.

6. 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 BAR'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.

7. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If respondent's license is expired at the time the decision becomes effective, the 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.

8. Cost Recovery

Respondent shall pay the Bureau \$8,772.18 for the reasonable costs of the investigation and enforcement of case No. 79/18-15473. Respondent shall make such 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. 79/18-15473. 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. BAR 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.

9. 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 BAR.

10. 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 BAR. The Director and the BAR 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 BAR at any time before the date of the originally scheduled completion of probation. If respondent applies to BAR 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 BAR and left outstanding at the time of surrender.

11. Training Course

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

12. Supervision Requirements

Respondent shall not delegate supervisory duties, as they relate to the business activities relevant to the probation any 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. 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 BAR within 10 days of the medical affirmation of the condition.

DATE: August 27, 2020

Signature on File
LINDA POLLACK
Administrative Law Judge
Office of Administrative Hearings