

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

In the Matter of the Accusation Against:

**QUICK TUNE & BRAKE, INC., doing business as
QUICK TUNE & BRAKE, INC.; SHAFIULLAH WARDAK,
President,**

Automotive Repair Dealer Registration No. ARD 267117

Brake Station License No. BS 267117, Class C

Lamp Station License No. LS 267117, Class A

Smog Check Station License No. RC 267117

and

SHAFIULLAH SHIZROY WARDAK,

Brake Adjustor License No. BA 30707, Class C

Lamp Adjustor License No. LA 30707, Class A

Smog Check Inspector License No. EO 30707

Smog Check Repair Technician License No. EI 30707

Respondents.

Agency Case No. 77/18-5735

OAH No. 2020070763

PROPOSED DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference and telephone on November 2, 2020, and February 22 and 25, 2021.

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

Attorney Michael Levin represented respondents Quick Tune & Brake, Inc., and Shafiullah Shizroy Wardak, who was present for the hearing.

The matter was submitted for decision on February 25, 2021.

FACTUAL FINDINGS

1. On April 22, 2020, complainant Patrick Dorais issued an accusation in his official capacity as Chief of the Bureau of Automotive Repair (bureau), Department of Consumer Affairs (department), alleging 33¹ causes for discipline. The accusation was based on alleged incidents related to improper brake and lamp certifications issued on two occasions, one in 2018 and one in 2019. Respondent filed a notice of defense and this hearing ensued.

¹ Numbers for the last two causes were duplicates and corrected at hearing.

2. In 1997, the bureau issued Shafiullah Shizroy Wardak (Wardak) a brake adjustor license (BA 30707, class C), scheduled to expire on August 31, 2022,² and a lamp adjustor license (LA 30707, class A), scheduled to expire on August 31, 2021.

3. In 2003, the bureau issued an advanced emission specialist technician license (EA 30707) to Wardak. The license was renewed effective September 4, 2013, as a smog check inspector license (EO 30707) scheduled to expire on August 31, 2021, and a smog check repair license (EI 30707) that expired on August 31, 2019.

4. On November 9, 2011, the bureau registered respondent Quick Tune & Brake, Inc., Shafiullah Wardak – president/secretary/treasurer, doing business as Quick Tune & Brake, Inc., (Quick Tune) as an Automotive Repair Dealer (ARD 267117).

5. On March 28, 2012, the bureau issued Quick Tune licenses as a Smog Check Station (RC 267117), a Lamp Station (LS 267117, class A) and a Brake Station (BS 267117, class C). The registration and licenses remain in effect, each scheduled to expire on November 30, 2021.

6. The bureau conducted an undercover operation on April 24, 2012. Due to eight alleged violations of the Automotive Repair Act for a brake and lamp inspection, the bureau held an office conference with respondent Wardak on August 29, 2012. The bureau took no disciplinary action at that time, but noted that future violations may lead to formal legal action. Wardak signed the office conference report, but at hearing, he did not recall discussing any violations. Five of the alleged violations are similar to those alleged for 2018 and 2019.

² This license expired on August 31, 2018, and was later renewed.

7. A lamp inspection requires all of a vehicle's lighting equipment to be inspected for defects and proper aim. The aim is verified by using an aiming screen or an optical type headlamp-aiming machine. The certificate of compliance form contains a series of boxes that when checked indicate that the inspector performed an inspection and/or adjustment of the lamps, and which type of headlight aimer was used.

8. A brake inspection requires all of a vehicle's brake equipment to be inspected for defects. It involves taking off the wheels, doing a general visual inspection of the brake system, and using special measuring devices, followed by a road test. Passing a road test is not indicative that all brake components meet the required specifications.

9. Lamp and brake inspections of reconstructed vehicles require a thorough and complete examination, as the vehicles possibly may have been damaged or misaligned due to an accident or theft damage. These vehicles cannot be registered by the Department of Motor Vehicles without lamp and brake certificates of compliance.

Undercover Operations

2018

10. Bureau program representative Rodney Rosenberger has worked in the auto industry since 1982, and has been licensed as a lamp and brake adjustor since 2018, when he began working for the bureau. Prior to August 14, 2018, Rosenberger modified a 2001 Ford Focus by misadjusting the vertical aim of both headlights lower than their maximum specifications, and by replacing a brake rotor with one under the minimum manufacturer service specifications, and a brake drum with one over the

specifications. In this condition, the vehicle would not pass properly performed lamp and brake inspections.

11. The bureau gave custody of the Ford to undercover operator James Chan, who took it to Quick Tune on August 14, 2018. Using an assumed name, he requested a lamp and brake inspection. He left the Ford at the station and returned when told it was ready. Wardak filled out and signed both certificates of compliance which stated the purpose of the inspection was for registration of a reconstructed vehicle.

12. The certificate of compliance for lamp adjustment indicated the Ford passed the headlights portion of the inspection. The certificate stated that an optical aimer was used. The certificate of compliance for brake adjustment indicated the Ford passed the drums and rotors portion of the inspection. The certificate for brake adjustment stated a 12-foot road test was done for the Ford to stop at 20 miles per hour.

13. After the Ford was returned to Rosenberger, his re-inspection found both headlights were still misadjusted. Quick Tune and Wardak failed to adhere to the Lamp Adjustors' Handbook inspection and certification criteria. Rosenberger also found that the improper brake rotor and brake drum replacements remained intact, even though the wheels had been removed during the Quick Tune inspection. Quick Tune and Wardak failed to adhere to the Brake Adjustors' Handbook inspection and certification criteria. The brake system should have failed the inspection by Quick Tune and Wardak. The certificates of compliance should not have been issued.

2019

14. Bureau program representative Darrell Warkentin has worked in the auto industry in various capacities since 1985. He has been licensed as a lamp and brake adjuster and worked for the bureau for over 13 years. Prior to February 21, 2019, Warkentin modified a 2007 Toyota Camry by misadjusting the vertical aim of both headlights lower than their maximum specifications, and by replacing two brake rotors with undersized rotors. In this condition, the vehicle would not pass properly performed lamp and brake inspections.

15. On February 21, 2019, the bureau gave custody of the Toyota to undercover operator Randal Phillips, who took it to Quick Tune. Using an assumed name, he requested a lamp and brake inspection. He left the Toyota at the station, and returned when told it would be ready. Wardak filled out and signed both certificates of compliance which stated the purpose of the inspection was for registration of a reconstructed vehicle.

16. The certificate of compliance for lamp adjustment indicated that the Toyota passed the headlights portion of the inspection. The certificate stated that an optical aimer was used. The certificate of compliance for brake adjustment indicated that the Toyota passed the rotors portion of the inspection. The certificate for brake adjustment stated a 12-foot road test was done for the Toyota to stop at 20 miles per hour.

17. After the Toyota was returned to Warkentin, his re-inspection found neither headlamp had been adjusted. Quick Tune and Wardak failed to adhere to the Lamp Adjustors' Handbook inspection and certification criteria. Warkentin also found that the improper brake rotor replacements remained intact, even though the wheels

had been removed during the Quick Tune inspection. Quick Tune and Wardak failed to adhere to the Brake Adjustors' Handbook inspection and certification criteria. The brake system should have failed the inspection. Both certificates of compliance should not have been issued.

License Lapse

18. On August 31, 2018, respondent Wardak failed to renew his brake adjustor license, as required every four years. Wardak renewed his lamp adjustor license on August 31, 2018. He usually received reminders for his smog technician and smog check inspector licenses, but the bureau had not sent him any reminders about his brake or lamp licenses, all due for renewal the same date as the licensee's birth month and day. The bureau does not send renewal reminders to any licensees for renewal of brake or lamp licenses.

19. On May 7, 2019, Wardak applied to renew his brake adjustor license. He contended at hearing that he did not know it had expired until May 31, 2019, when bureau program representative Parsa Hajjarian performed a periodic brake station inspection at Quick Tune. He informed Wardak that his brake adjustor had expired and that he had to cease activity requiring that license. Hajjarian took relevant brake inspector books from the station, showing that Wardak had issued 372 certificates of brake adjustment without a valid license.

20. On June 6, 2019, the bureau received payment for the renewal application. On July 10, 2019, Wardak took and passed the test. The bureau issued a renewal license on July 12, 2019.

Respondents' Evidence

21. Wardak is the principal for Quick Tune. He has worked at the station and been in business since August 1998. The station is open Monday through Saturday. It has a back lot that extends 100 feet, where he tests brakes. Wardak testified that he performed four to five lamp and brake inspections a day in 2018 and 2019.

22. Wardak claimed at hearing that he generally calibrates the headlight aimer manually. He was aware that it is not 100 percent accurate as it is affected by the ground slope, tire pressure, and weight of the vehicle. Wardak does not record the aimer measurements.

23. Wardak usually performed a visual inspection of brake drums and rotors after taking off the wheels. He did not see anything wrong with them when he inspected the Ford in 2018. For the Toyota, Wardak misread the micrometer measurements, leading him to mistakenly pass the vehicle for inspection in 2019.

24. Wardak contended that his improper brake and lamp inspections caused no harm, and he submitted a written statement at hearing with an explanation for his errors. Outweighing his rationalizations, Wardak took responsibility for his "honest" mistakes as human error. He seriously and credibly testified that he did not intend to defraud anyone by his lack of proper inspections. Considering the evidence in this matter, Wardak's conduct was a matter of incompetence or negligence, rather than fraud.

25. Wardak did not claim responsibility for his failure to timely renew his brake adjuster license. At hearing, he claimed: 1) he should have been notified by the bureau when his brake adjuster license was due to expire; 2) the bureau mistakenly mailed the license to a former address he corrected with the bureau in 2011, when he

moved to a new residence; 3) he lost track of time; 4) he does not look at the licenses every day; and 5) it was a mistake because his other licenses were timely renewed. Respondents contend that there was no harm to the public during the time Wardak's brake adjustor license was expired.

26. Respondents have no prior disciplinary actions. None of the allegations in this matter were due to smog checks or smog repairs. In September 2020, the station's smog check results met certain criteria making it eligible for "STAR" certification that requires higher smog check performance standards.

27. In addition to submitting printed online favorable reviews of Quick Tune, respondents submitted 12 character letters. Pierre Sarkis, who has a professional tax service and prepares payrolls for Quick Tune, wrote that Wardak is "honest, reliable, and trustworthy." The additional letters dated in October or November 2020 were from customers. None of them were aware of the allegations in this matter.

28. Diane Hassan has gone to Wardak for automobile service and parts for 20 years. She wrote that Wardak identifies a solution rather than trying to solicit unnecessary services. Irshad Ahmed wrote that in the 20 years as a customer and friend, he has known Wardak to be honest and trustworthy.

29. Diya Ayaad wrote that he has been going to Quick Tune for five years and found Wardak to be a "trustworthy man of his word." Yasine Shakadeh wrote that when she took her car to Quick Tune, the services exceeded her expectations. Numan Jamjoum wrote that in the 10 years he has been a customer, Wardak has been very honest and took time to explain what was wrong with the vehicle.

30. Alia Hamdan wrote that in the eight years he has been a customer, Wardak has honored his agreements and was "always reliable and reasonable." Pat

Shivers wrote that in 1998, he discussed with Wardak and his brother the pros and cons of opening a business. Shivers continued to take his car to Quick Tune for service even after he moved 130 miles away from the Quick Tune station.

31. Ajmal Boomwal wrote that Quick Tune has been the "one stop shop" for the fleet of patrol vehicles for Securelion Security, and that the servicemen were "knowledgeable and professional." Sam Gouhary wrote he has known Wardak since 1999, when NY Pizza Pasta in Pleasanton began taking its delivery vehicles to Quick Tune for service. He wrote that Wardak "was always truthful and honest."

32. Sayed Ahmed, doing business as USA Steam Cleaning Services, LLC, wrote that he has known Wardak for over 20 years. He has used Quick Tune for business vehicles and his own cars. He described Wardak as "a one of a kind character full of integrity, honesty, and morals." Hamid Mirkooshesh, owner of Fast N Loud Auto Sales, first went to Quick Tune in 1999 to service a vehicle that was purchased at auction and had some issues. He has recommended thousands of people to Quick Tune because of Wardak's honesty and experience.

Costs

33. Complainant seeks \$18,549.42 for investigation and prosecution costs. A declaration of the deputy attorney general established prosecution costs of \$12,982.50 for legal services time provided through October 28, 2020. The bureau submitted a declaration dated October 29, 2020, certifying investigation costs of \$5,566.92. The costs sought are reasonable.

LEGAL CONCLUSIONS

1. The burden of proof in this proceeding is on complainant, and the standard of proof is a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

2. Licensed lamp and brake adjusters may issue a certificate of compliance only after an inspection or adjustment made in accordance with the requirements of the Vehicle Code, the vehicle manufacturer's standards, specifications and procedures, and the Bureau's Handbooks for Lamp Adjusters and Stations and for Brake Adjusters and Stations. (Bus. & Prof. Code, § 9889.16; Cal. Code Reg., tit. 16, § 3305, subd. (a)(1)-(5).)

Causes for Discipline Against Respondent Quick Tune

FIRST AND SEVENTEENTH CAUSES (UNTRUE OR MISLEADING STATEMENTS)

3. 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 on August 14, 2018 and February 21, 2019, that two cars with improperly aligned headlamps and with improper brake rotors and brake drums had been properly inspected and by certifying that these vehicles were in compliance, respondent Quick Tune made untrue and misleading statements. Based on Findings 12, 13, 16 and 17, cause exists to discipline respondent Quick Tune's automotive repair dealer registration.

SECOND AND EIGHTEENTH CAUSES (FRAUD)

4. Business and Professions Code section 9884.7, subdivision (a)(4), authorizes the bureau to discipline the registration of an automotive repair dealer for conduct constituting fraud. Four acts of inadequate inspections on August 14, 2018 and February 21, 2019, resulted in the issuance of certificates of compliance that should not have been issued. However, there is insufficient evidence to conclude that the conduct constituted fraud. Based on Finding 24, cause does not exist to discipline respondent's automotive repair dealer registration under Business and Professions Code section 9884.7, subdivision (a)(4).

THIRD AND NINETEENTH CAUSES (GROSS NEGLIGENCE)

5. Business and Professions Code section 9884.7, subdivision (a)(5), authorizes the bureau to discipline the registration of an automotive repair dealer for conduct constituting gross negligence. Respondent's failure to competently inspect two brake and lighting systems and adhere to the inspection and certification criteria on August 14, 2018 and February 21, 2019, constituted gross negligence. Based on Findings 10 through 17, cause exists to discipline respondent's automotive repair dealer registration.

FOURTH AND TWENTIETH CAUSES (FAILURE TO COMPLY WITH AUTOMOTIVE REPAIR ACT)

6. Business and Professions Code section 9884.7, subdivision (a)(6), authorizes the bureau to discipline the automotive repair dealer registration of a licensee who failed to comply with the Automotive Repair Act. By issuing two brake and two lamp certificates of compliance not in conformance with Vehicle Code

requirements or bureau regulations, respondent violated Business and Professions Code section 9889.16. Based on Findings 10 through 17, cause exists to discipline respondent's automotive repair dealer registration under Business and Professions Code section 9884.7, subdivision (a)(6), for failure to comply with the Automotive Repair Act for this reason.

7. Complainant contends that respondent committed perjury on August 14, 2018 and February 21, 2019, by willfully making false entries on two brake and two lamp certificates, in violation of Business and Professions Code section 9889.22. While the entries were not true, there is insufficient evidence to conclude that the actions were willful to constitute perjury. Based on Finding 24, cause does not exist under Business and Professions Code section 9884.7, subdivision (a)(6), to discipline respondent's automotive repair dealer registration for failure to comply with the Automotive Repair Act for this reason.

FIFTH CAUSE (VIOLATION OF REGULATIONS)

8. Business and Professions Code section 9884.7, subdivision (a)(6), also authorizes the bureau to discipline the automotive repair dealer registration of a licensee who failed to comply with the bureau's regulations. Respondent violated the regulations by failing to perform two brake and two lamp inspections as required under the specifications, instructions and directives issued by the bureau and the vehicle manufacturers. (Cal. Code Regs, tit. 16, § 3305, subd. (a).) Respondent additionally violated the regulations by issuing two lamp and two brake certificates of compliance when the lamps and brakes were not in compliance and should not have passed the inspections. (*Id.*, §§ 3316, subd. (d)(2), 3321, subd. (c)(2), & 3373.)

9. Based on Findings 10 through 17, cause exists to discipline respondent's automotive repair dealer registration under Business and Professions Code section 9884.7, subdivision (a)(6).

SIXTH AND TWENTY-FIRST CAUSES (WILLFUL DEPARTURE FROM ACCEPTED TRADE STANDARDS)

10. Business and Professions Code section 9884.7, subdivision (a)(7), authorizes the bureau to discipline the automotive repair dealer registration of a licensee for "any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another." In disregard of accepted trade standards, respondent failed to properly perform two brake and two lamp inspections which was prejudicial to another on occasions in 2018 and 2019. Based on Findings 10 through 17, cause exists to discipline respondent's automotive repair dealer registration.

SEVENTH AND TWENTY-SECOND CAUSES (VIOLATION OF LAMP AND BRAKE STATION ADJUSTOR LAWS)

11. Business and Professions Code section 9889.3, subdivision (a), authorizes the bureau to discipline a licensee for violating any section of the Business and Professions Code relating to its licensed activities. By failing to properly perform two brake and two lamp inspections on occasions in 2018 and 2019, respondent violated sections of the Business and Professions Code, as determined in Conclusions 3, 6 and 10. Cause exists to discipline respondent's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (a).

EIGHTH AND TWENTY-THIRD CAUSES (VIOLATION OF LAMP AND BRAKE STATION ADJUSTOR REGULATIONS)

12. Business and Professions Code section 9889.3, subdivision (c), authorizes the bureau to discipline a licensee for violating any of the regulations relating to the Automotive Repair Act. By the determination in Conclusion 8, respondent violated such regulations. (Cal. Code Regs, tit. 16, §§ 3305, subd. (a), 3316, subd. (d)(2), 3321, subd. (c)(2), & 3373.) Cause exists to discipline respondent's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (c).

NINTH AND TWENTY-FOURTH CAUSES (DISHONESTY, FRAUD, OR DECEIT)

13. Business and Professions Code section 9889.3, subdivision (d), authorizes the bureau to discipline a licensee who commits any act involving dishonesty, fraud, or deceit whereby another is injured. Four brake and lamp certificates of compliance issued by Wardak at Quick Tune on occasions in 2018 and 2019 were untrue and caused injury to another. However, there is insufficient evidence to conclude that the actions involved dishonesty, fraud, or deceit. Based on Finding 24, cause does not exist to discipline respondent's brake and lamp station licenses under Business and Professions Code section 9889.3, subdivision (d).

THIRTY-SECOND CAUSE (OPERATING WITH AN EXPIRED LICENSE)³

14. Business and Professions Code section 9887.1, subdivision (a), provides that an individual whose license has expired shall immediately cease the activity requiring a license, and authorizes the bureau to discipline an automotive repair dealer registration for failure to comply. Based on Findings 2, 18 and 19, respondent Quick Tune issued brake certificates of compliance after respondent Wardak's brake adjustor license expired, subjecting the automotive repair dealer registration to discipline. Cause exists to discipline respondent Quick Tune's automotive repair dealer registration under Business and Professions Code section 9887.1, subdivision (a).

THIRTY-THIRD CAUSE (FAILURE TO SURRENDER BRAKE STATION LICENSE)

15. Title 16, California Code of Regulations, section 3308, subdivision (a), provides that when an official station license has expired, the station shall return to the bureau all unused certificates purchased by the station to carry out the function for which it is no longer licensed. In this matter, an official station license did not expire, as only the individual brake adjustor license issued to Wardak expired. As there is no evidence that the brake station license issued to Quick Tune expired, there is no cause to discipline Quick Tune's automotive repair dealer registration under this regulation.

³ Although causes 32 and 33 are shown in the accusation under respondent Wardak's smog check inspector and smog check repair licenses, the language pertains only to respondent Quick Tune's automotive repair dealer registration.

Causes for Discipline Against Respondent Wardak

TENTH AND TWENTY-FIFTH CAUSES (VIOLATION OF LAMP AND BRAKE ADJUSTOR LAWS)

16. Business and Professions Code section 9889.3, subdivision (a), authorizes the bureau to discipline a licensee for violating any section of the Business and Professions Code relating to its licensed activities. By failing to properly perform two brake and two lamp inspections on two occasions in 2018 and 2019, respondent Wardak violated brake and lamp adjustor laws. Based on Findings 10 through 17, cause exists to discipline respondent's brake and lamp adjuster licenses.

ELEVENTH AND TWENTY-SIXTH CAUSES (VIOLATIONS OF LAMP AND BRAKE ADJUSTOR REGULATIONS)

17. Business and Professions Code section 9889.3, subdivision (c), authorizes the bureau to discipline a licensee for violating any of the regulations relating to the Automotive Repair Act. By failing to properly perform two brake and two lamp inspections on occasions in 2018 and 2019, respondent Wardak violated brake and lamp adjustor regulations. (Cal. Code Regs, tit. 16, §§ 3305, subd. (a), 3316, subd. (d)(2), 3321, subd. (c)(2), & 3373.) Based on Findings 10 through 17, cause exists to discipline respondent's brake and lamp adjustor licenses.

TWELFTH AND TWENTY-SEVENTH CAUSES (DISHONESTY, FRAUD, OR DECEIT)

18. Business and Professions Code section 9889.3, subdivision (d), authorizes the bureau to discipline a licensee who commits any act involving dishonesty, fraud, or deceit whereby another is injured. The four brake and lamp inspections performed by respondent on two dates were untrue and caused injury to another. However, there is

insufficient evidence to conclude that the actions involved dishonesty, fraud, or deceit. Based on Finding 24, cause does not exist to discipline respondent's brake and lamp adjustor licenses under Business and Professions Code section 9889.3, subdivision (d).

THIRTEENTH AND TWENTY-EIGHTH CAUSES (VIOLATION OF LAMP AND BRAKE LAWS RELATED TO LICENSING)

19. Business and Professions Code section 9889.3, subdivision (h), authorizes the bureau to discipline a licensee who violates any section of the Business and Professions Code that relates to licensing activities. By issuing four certificates of compliance when the brake and lamp systems were not in compliance, Wardak violated Business and Professions Code sections relating to his licensing activities as determined in Conclusions 16 and 20. Cause exists to discipline respondent's brake and lamp adjustor licenses under Business and Professions Code section 9889.3, subdivision (h).

FOURTEENTH AND TWENTY-NINTH CAUSES (FAILURE TO PROPERLY PERFORM A LAMP AND BRAKE INSPECTION)

20. Business and Professions Code section 9889.16 requires a licensee to inspect a vehicle's lamps and brakes to conform with the requirements of the Vehicle Code before issuing a certificate of compliance. Based on Findings 10 through 17, respondent failed to do so on four occasions, providing cause to discipline respondent's brake and lamp adjustor licenses.

**FIFTEENTH AND THIRTIETH CAUSES (WILLFULLY MAKING A FALSE
STATEMENT ON A CERTIFICATE OF COMPLIANCE)**

21. Business and Professions Code section 9889.22 provides that the willful making of any false statement or entry regarding a material matter in any certificate of compliance constitutes perjury. Respondent signed four certificates of compliance under penalty of perjury in 2018 and 2019 even though the lamps and brakes for those certificates were not in compliance. However, there is insufficient evidence to conclude that his actions were willful to constitute perjury. Based on Finding 24, cause does not exist under Business and Professions Code section 9889.22 to discipline respondent's brake and lamp adjustor licenses.

SIXTEENTH AND THIRTY-FIRST CAUSES (DISHONESTY, FRAUD, OR DECEIT)

22. Health and Safety Code section 44072.2, subdivision (d), authorizes the bureau to discipline a licensee who commits any act involving dishonesty, fraud, or deceit whereby another is injured. Two brake and two lamp inspections performed by respondent on two occasions were untrue and caused injury to another. However, there is insufficient evidence to conclude that his actions involved dishonesty, fraud, or deceit. Based on Finding 24, cause does not exist to discipline respondent's smog check inspector and smog check repair technician licenses under Health and Safety Code section 44072.2, subdivision (d).

Other Matters

23. Business and Professions Code section 9884.7, subdivision (c), authorizes the bureau to suspend, revoke, or place on probation the registration for the business operated by respondents upon a finding that respondents engaged in a course of

repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. Based on Findings 10 through 17, respondents engaged in a course of repeated violations. However, based on Finding 24, they did not engage in a course of willful violations. For reasons discussed in Conclusion 29, the registration of respondent Quick Tune shall be placed on probation.

24. Business and Professions Code section 9889.9 provides that when any license has been revoked or suspended following a hearing, the bureau may revoke or suspend any additional license of the same licensee. For reasons discussed in Conclusions 30, no additional licenses issued to both respondents, other than lamp and brake station and adjustment licenses, shall be revoked. For reasons discussed in Conclusion 29, the automotive repair dealer registration issued to Quick Tune shall be placed on probation.

Discussion

25. Cause for discipline against both respondents having been established, the issue is the appropriate discipline to impose. The bureau provides factors to be considered in determining the appropriate discipline in its Disciplinary Guidelines.

26. Factors in aggravation include: prior warnings from the bureau; prior office conferences with the bureau, prior history of citations; 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: absence of prior disciplinary action; evidence of retraining and initiation of steps to minimize recurrence; and evidence of substantial measure to correct business practices to minimize recurrence.

27. Following an inspection that resulted in eight alleged brake and lamp violations, the bureau gave respondents a warning about future violations during an office conference with the bureau in 2012 (Finding 6). Respondents' subsequent and similar violations in two consecutive years in 2018 and 2019 (Findings 10 through 17) demonstrate that their unlawful actions are a pattern or practice. Their actions constituted gross negligence that undermines the integrity of the bureau's lamp and brake inspection program. Their conduct posed a risk of harm to the public in that lamps and brakes were certified that were not appropriately tested.

28. Although no previous disciplinary action has been taken, respondents provided no evidence of substantial measures to correct practices to minimize recurrence of improper lamp and brake inspections and adjustment. Under these circumstances, revocation of Wardak's lamp adjustor and brake adjustor licenses, and revocation of Quick Tune's lamp station and brake station licenses is warranted. Given the serious and repeated nature of the violations, it would be against the public interest to permit respondents to retain these particular licenses.

29. Revocation of Quick Tune's automotive repair dealer registration, however, is not necessary for the protection of the public. Quick Tune has been operating since 1998 with no other incidents leading to discipline. It would not be against the public interest to permit Quick Tune to retain its automotive repair dealer registration, for a probationary period of five years, under standard terms and conditions.

30. Complainant requests that Wardak's smog check inspector and smog check repair licenses and Quick Tune's smog station license also be disciplined. Respondents have no record of discipline on these licenses, and the allegations did not involve smog inspections or smog repairs. Respondents took some responsibility

for their actions at the hearing, as Wardak credibly testified that he did not intend to defraud anyone (Finding 24). Under these circumstances, no discipline is warranted for these licenses.

Costs

31. 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 provided 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.

32. 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. Based on the first three factors, a reduction by about one-fourth of the total cost of \$18,549.42 is warranted in this case. Respondents are jointly and severally liable for reimbursement of the bureau's remaining costs of \$13,912.00.

ORDER

Respondent Shafiullah Shizroy Wardak

1. Brake adjustor license no. BA 30707, class C, issued to Shafiullah Shizroy Wardak, is revoked.

2. Lamp adjustor license no. LA 30707, class A, issued to Shafiullah Shizroy Wardak, is revoked.

3. No other license issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Business and Professions Code in the name of respondent Shafiullah Shizroy Wardak is revoked.

4. The accusation pertaining to smog check inspector license no. EO 30707, issued to Shafiullah Shizroy Wardak, is dismissed.

5. The accusation pertaining to smog check repair license no. EI 30707, issued to Shafiullah Shizroy Wardak, is dismissed.

6. Respondent Shafiullah Shizroy Wardak shall pay the Bureau of Automotive Repair \$13,912.00 for the reasonable costs of the investigation and enforcement of case no. 77/18-5735. Respondent Shafiullah Shizroy Wardak and respondent Quick Tune & Brake, Inc., doing business as Quick Tune & Brake, Inc., are jointly and severally liable for costs.

Respondent Quick Tune & Brake, Inc. (Shafiullah Wardak, president)

7. Brake station license no. BS 267117, class C, issued to Quick Tune & Brake, Inc., Shafiullah Wardak, president, is revoked.

8. Lamp station license no. LS 267117, class A, issued to Quick Tune & Brake, Inc., Shafiullah Wardak, president, is revoked.

9. The accusation pertaining to smog check station license no. RC 267117, issued to Quick Tune & Brake, Inc., Shafiullah Wardak, president, is dismissed.

10. Automotive repair dealer registration No. ARD 267117, issued to respondent Quick Tune & Brake, Inc., Shafiullah Wardak, president, is revoked. However, the revocation is stayed and respondent is placed on probation for five years, on the following terms and conditions:

a. 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.

b. Quarterly Reporting

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

c. Report Financial Interests

Respondent 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 owner of any respondent facility may have in any other business required to be registered under Business and Professions Code section 9884.6.

d. Access to Examine Vehicles and Records

Respondent 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 under bureau laws and regulations.

e. 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. 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.

f. 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 this 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.

g. 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 the 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.

h. Cost Recovery

Respondent shall pay the bureau \$13,912.00 for the reasonable costs of the investigation and enforcement of case no. 77/18-5735. Respondents Quick Tune & Brake, Inc., and Shafiullah Shizroy Wardak are jointly and severally liable for costs. Respondent shall make payments on a payment schedule to be determined by the bureau. Full payment shall be completed no later than six months before probation terminates. 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 measure in

collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

i. Completion of Probation

Upon successful completion of probation, respondent's affected registration 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.

j. 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 discipline 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.

k. Any other automotive repair dealer registration issued to respondent Quick Tune & Brake, Inc., Shafiullah Wardak, president, is revoked.

DATE: 03/29/2021

Signed Copy on File
BARBARA O'HEARN
Administrative Law Judge
Office of Administrative Hearings