

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

In the Matter of the Accusation Against:

VIKRAMDEEP SINGH RANDHAWA,
Pres./Sec./Treas.
BAYSMOGSTERS, Inc.
dba, CHEAP SMOG TEST
1205 Petaluma Hill Road
Santa Rosa, CA 95404

31995 Trevor St. (Mailing)
Hayward, CA 94544

Automotive Repair Dealer License No.: ARD
283472
Smog Check Station License No.: TC 283472

and

MARIO ITURBE
1317 Stroven Lane
Santa Rosa, CA 95407

Smog Check Inspector License No.: EO
635295

and

ANTOINE DE SHAWN BRACY SR.
PO Box 2183
Suisun, CA 94533

Smog Check Inspector License No.: EO
634177
Smog Check Repair Technician License No.:
EI 634177

Respondents.

Case No.: 79/18-1945

OAH No.: 2018080817

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DECISION

The attached Proposed Decision of the Administrative Law Judge AS TO RESPONDENT ANTOINE DE SHAWN BRACY SR., ONLY, 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 become effective at 5:00 PM on May 20, 2019.

DATED: April 15, 2019



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:

VIKRAMDEEP SINGH RANDHAWA –
PRESIDENT/SECRETARY/TREASURER,
BAYSMOGSTERS, INC. dba CHEAP
SMOG TEST
Automotive Repair Dealer Registration
No. ARD 283472,
Smog Check, Test Only Station
No. TC 283472

MARIO ITURBE
Smog Check Inspector License
No. EO 635295

ANTOINE DE SHAWN BRACY SR.
Smog Check Inspector License
No. EO 634177,
Smog Check Repair Technician License
No. EI 634177 (former Advanced Emission
Specialist License No. EA 634177)

Respondents.

Case No. 79/18-1945

OAH No. 2018080817

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on January 8, 2019, in Oakland, California.

Susana A. Gonzales, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Respondent Antoine De Shawn Bracy, Sr., was present at the hearing, representing himself.

The matter was submitted for decision on January 8, 2019.

FACTUAL FINDINGS

Procedural Background

1. On May 22, 2018, complainant Patrick Dorais issued the accusation in his official capacity as Chief of the Bureau of Automotive Repair (Bureau or BAR), against three respondents: Vikramdeep Singh Randhawa – President/Secretary/Treasurer, Baysmogsters, Inc. dba Cheap Smog Test; Mario Iturbe; and Antoine De Shawn Bracy, Sr.

2. Prior to the hearing, respondents Baysmogsters and Iturbe signed stipulated settlements. Accordingly, the hearing proceeded only against respondent Bracy, on the accusation's fifth and sixth causes for discipline.

3. On April 4, 2012, the Bureau issued Advanced Emission Specialist Technician License Number EA 634177 to respondent Antoine De Shawn Bracy, Sr. The license was cancelled on March 5, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), respondent elected to have the license renewed by the Bureau as Smog Check Inspector License Number EO 634177 and Smog Check Repair Technician License Number EI 634177, effective March 5, 2014. The Smog Check Inspector license was in full force and effect at all times relevant to this matter, and will expire on March 31, 2020 unless renewed. The Smog Check Repair Technician license expired on March 31, 2016.

4. The accusation seeks to impose discipline on respondent's licenses based on allegations that he issued certificates of compliance for two vehicles that were not actually subjected to a properly performed smog inspection, by engaging in the prohibited practice of clean plugging (described in more detail below). As clarified at hearing, complainant is no longer seeking costs of investigation and enforcement from Bracy.

California's Smog Check Program

5. California's Smog Check Program requires most motor vehicle owners to subject their vehicles to and pass a smog check inspection and receive a certificate of compliance every two years when renewing the vehicle registration and when the vehicle's title is transferred. These inspections are performed by smog check inspectors at smog check stations; both are licensed and regulated by the Bureau.

6. As of March 2015, the Bureau requires use of an On-Board Diagnostic Inspection System (BAR-OIS) for inspecting most model-year 2000 and newer gasoline and hybrid vehicles, and 1998 and newer diesel-powered vehicles. The BAR-OIS system consists of a Data Acquisition Device (DAD), computer, bar code scanner, and printer. Each licensed smog check inspector is issued a personal access code used to gain access to the BAR-OIS. The DAD is a scan tool that, when requested by the California BAR-OIS software, retrieves On-Board Diagnostic (OBD) data from the vehicle's on-board computer. The DAD connects the BAR-OIS computer to the vehicle's diagnostic link connector. The

bar code scanner is used to input technician information, the vehicle identification number (VIN), and Department of Motor Vehicles (DMV) renewal information. The printer is used to print vehicle inspection reports with information for vehicle owners and certificates of compliance for vehicles that pass inspection. The BAR-OIS software communicates via the internet with the Bureau's Vehicle Information Database (VID), which is a statewide computer database containing all data gathered during smog check inspections, as well as DMV registration data, emission standards, smog check stations and inspectors, and certificates of compliance.

7. Data retrieved, captured, and recorded to the VID during a smog check inspection include the eVIN, communication protocol, and Parameter Identifications (PID) count.

8. The VIN that is physically present on all vehicles is also required to be programmed into the vehicle's on-board Powertrain Control Module (PCM) on model-year 2005 and newer vehicles during the manufacturing process, and was also programmed into on-board computers for some earlier model year vehicles. This electronically programmed VIN is referred to as the eVIN, and it should match the physical VIN on the vehicle.

9. The communication protocol is the specific language that a vehicle's PCM uses to communicate with scan tools and other devices or computers such as the BAR-OIS. It is programmed into the PCM during the vehicle's manufacture and does not change.

10. PID's are data points reported by a vehicle's on-board computer, such as engine speed, vehicle speed, engine temperature, and other data. Each make and model of vehicle reports a specific number of PID's when being tested by the BAR-OIS, referred to as the PID count. The PID's and PID count are programmed during the vehicle's manufacture; vehicles of the same year, make, and model have the same PID count.

11. In addition to gathering electronic data using the BAR-OIS, a smog check inspector performs visual and functional tests on the vehicle. A visual inspection of emission control components verifies the required emission control devices are present and properly connected, and a functional test is performed of the emission control system.

12. Using the results of the on-board computer data, visual inspection, and functional test, the BAR-OIS software determines whether the vehicle passes inspection. A vehicle inspection report is printed as a physical record of the test results, including the certificate of compliance number that was issued if the vehicle passed inspection. The smog check inspector must sign the vehicle inspection report to indicate that the inspection was performed according to Bureau guidelines. Each certificate of compliance has a unique number, which can be used to track which smog check station purchased the certificate of compliance and to which vehicle it was issued. If the vehicle passes inspection, the vehicle information and test results are electronically transmitted to the DMV.

13. The Bureau is aware of methods used by some smog check stations and inspectors to fraudulently issue smog certificates to vehicles that will not otherwise pass a properly conducted smog inspection, or in some cases, to vehicles that are not even present during the test. One such method is known as "clean plugging," in which a smog inspector uses one vehicle's properly functioning OBD system, or another source, to generate passing data readings or diagnostic information and issue a certificate of compliance for another vehicle that was not actually tested by the BAR-OIS.

The Bureau's Investigation

14. Nicholas H. Magaña is a Program Representative II employed by the Bureau, who has worked in that capacity for 10 years. Magaña performed the investigation for the Bureau in this matter, prepared a report dated January 30, 2018, and testified at hearing. Magaña reviewed VID data for smog check inspections performed at Cheap Smog Test. He also reviewed statewide smog test data for similar or "like" vehicles of the same make, model, and year.

15. Magaña's review identified two vehicles certified by respondent that were clean plugged and fraudulently certified, based on a finding that the eVIN, communication protocol, and PID count for the two vehicles purportedly being tested did not match the expected results for those vehicles.

2005 SUBARU FORESTER 2.5XS LL BEAN

16. A vehicle inspection report dated July 7, 2017 states that a smog inspection was performed under respondent's smog check inspector license at Cheap Smog Test for a 2005 Subaru Forester 2.5XS LL Bean with VIN JF1SG67625H705561; that the vehicle passed inspection, and that a certificate of compliance was issued. The vehicle inspection report indicates that the VIN was manually entered or scanned from a DMV document, rather than scanned from a bar code on the vehicle.

The underlying test data shows that the eVIN electronically transmitted during the test was JF2SJAHC2FH823955, which does not match the VIN that was manually entered or scanned. The communication protocol and PID count that were electronically transmitted also did not match the expected results from test data for like vehicles. The communication protocol was transmitted as ICAN11bt5, and the expected protocol is KWPF. The PID count was transmitted as 48|3, and the expected PID count is 19 or 19|3.

On July 11, 2015, a prior smog inspection was performed on the 2005 Subaru Forester 2.5XS LL Bean with VIN JF1SG67625H705561, at a different smog check station. The test data for that inspection shows the eVIN matched the manually entered VIN, and that the communication protocol and PID count were consistent with the expected data.

Magaña traced the eVIN that was transmitted in the test data for July 7, 2017, JF2SJAHC2FH823955, by looking up that number in the VID. That number belongs to a 2015 Subaru Forester 2.5I Limited, a different vehicle than the one certified on July 7, 2017.

The discrepancies in eVIN, communication protocol, and PID count demonstrate that the DAD was not connected to the 2005 Subaru Forester 2.5XS LL Bean being certified on July 7, 2017, causing the issuance of a fraudulent certificate of compliance.

2001 FORD ECONOLINE E250 VAN

17. A vehicle inspection report dated January 22, 2018 states that a smog inspection was performed under respondent's smog check inspector license at Cheap Smog Test for a 2001 Ford Econoline E250 Van with VIN 1FTNS24L51HA87641, that the vehicle passed inspection, and that a certificate of compliance was issued. The vehicle inspection report indicates that the VIN was manually entered or scanned from a DMV document, rather than scanned from a bar code on the vehicle.

The underlying test data shows that the eVIN electronically transmitted during the test was 1FBNE31L26HA32349, which does not match the VIN that was manually entered or scanned. The communication protocol and PID count that were electronically transmitted also did not match the expected results from test data for like vehicles. The communication protocol was transmitted as ICAN11bt5, and the expected protocol is JPWM. The PID count was transmitted as 46, and expected PID count is 19.

On December 15, 2015, a prior smog inspection was performed on the 2001 Ford Econoline E250 Van with VIN 1FTNS24L51HA87641, at Cheap Smog Test. The test data for that inspection shows that the eVIN matched the VIN scanned from the vehicle, and that the communication protocol and PID count were consistent with the expected data.

Magaña traced the eVIN that was transmitted in the test data for January 22, 2018, 1FBNE31L26HA32349, by looking up that number in the VID. That number belongs to a 2006 Ford Econoline E350 Super Duty, a different vehicle than the one certified on January 22, 2018.

The discrepancies in eVIN, communication protocol, and PID count demonstrate that the DAD was not connected to the 2001 Ford Econoline E250 Van being certified on January 22, 2018, causing the issuance of a fraudulent certificate of compliance.

Respondent's Evidence

18. Respondent admits that he failed to follow the required smog inspection procedures. For each of the two inspections at issue, the vehicle inspection report indicates that the VIN was manually entered or scanned from DMV paperwork, rather than scanned directly from the vehicle. Respondent acknowledges that the Smog Check Manual requires

him to verify the VIN that is physically located on the vehicle, and to verify that he is connecting the DAD to the correct vehicle, but admits he failed to do so.

19. Respondent signed the vehicle inspection reports for these two inspections, certifying under penalty of perjury that he performed the inspection in accordance with all Bureau requirements, and that the information listed on the report is true and accurate, despite the fact that he had not followed the required procedures and the listed information was not accurate.

20. Respondent does not appear to have any specific memory about the two smog inspections at issue in this matter. He surmises that the false certifications may have occurred because he failed to properly verify the VIN on the vehicle, or because he connected the DAD to the wrong vehicle or left the DAD unit in another vehicle while performing the inspection at issue.

21. Respondent was very busy at Cheap Smog Test, working 12-hour shifts and usually performing 30 to 50 smog inspections per day. Due to the high volume of business at Cheap Smog Test, respondent's work was rushed, and sometimes he would be performing two smog inspections at the same time. He concedes this sometimes interfered with his ability to do good work, but also acknowledges that the errors are "nobody's fault but mine."

22. Respondent no longer works at Cheap Smog Test. He worked there for two years, and left for a better job at another shop, where he is paid the same amount of money for fewer hours of work. At his current shop he does 15 to 35 inspections per day. Respondent believes he is now less at risk of committing errors, because he has a more manageable volume of inspections to perform.

23. Respondent has worked as a smog check technician since 2012. He has no prior history of license discipline, citations, or office conferences with the Bureau.

24. Respondent allowed his smog check repair technician license to expire because he was no longer working at a shop that performed repairs. He does not plan to do smog check repair work in the future.

25. Respondent credibly testified that he was not intentionally clean plugging.

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.)

2. A smog check inspector or repair technician license may be disciplined if the licensee violates any section of the statutes enacting the Motor Vehicle Inspection Program

or regulations adopted pursuant to those statutes. (Health & Saf. Code, § 44072.2, subds. (a) & (c).) A smog check inspector or repair technician license may be disciplined if the licensee commits any act involving dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, § 44072.2, subd. (d).)

3. The Bureau's Smog Check Manual provides the required methods and procedures for conducting smog check inspections, and was adopted by regulation. (Cal. Code Regs., tit. 16, §§ 3340.42, 3340.45.)

4. Respondent violated several statutes and regulations governing the Motor Vehicle Inspection Program. As set forth in Findings 16 through 18, respondent failed to ensure that smog inspections were performed on vehicles in accordance with the Bureau's prescribed procedures. (Health & Saf. Code, § 44012; Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a), 3340.42.) As set forth in Findings 16 and 17, respondent entered vehicle identification information into the BAR-OIS system, for a vehicle other than the one being tested. (Health & Saf. Code, § 44059; Cal. Code Regs., tit. 16, § 3340.41, subd. (c).) Accordingly, cause exists for discipline under Health and Safety Code section 44072.2, subdivisions (a) and (c).

5. As set forth in Findings 16, 17, and 19, respondent signed vehicle inspection reports under penalty of perjury, certifying that he performed the inspection in accordance with all Bureau requirements, and that the information on the report was true and accurate, despite the fact that he had not followed the required procedures and the VIN did not match for the vehicle being tested. This constitutes the willful making of a false statement or entry in violation of Health and Safety Code section 44059. Accordingly, cause exists for discipline under Health and Safety Code section 44072.2, subdivision (d), for committing an act involving dishonesty, fraud, or deceit.

6. A license may be disciplined after it has expired. (Health & Saf. Code, § 44072.6.)

7. When a license is revoked or suspended, any additional license issued in the name of the licensee may also be revoked or suspended. (Health & Saf. Code, § 44072.8.)

8. If a licensee is found to have committed violations of the licensing act, the Bureau's reasonable costs of investigation and enforcement may be awarded. (Bus. & Prof. Code, § 125.3.) However, in this case complainant is not seeking to recover its costs from respondent. Accordingly, no costs are awarded in this matter.

Determination of Discipline

9. The Bureau has established Guidelines for Disciplinary Orders and Terms of Probation (Guidelines) (rev. March 2016) for the purpose of determining appropriate discipline. The recommended disciplinary order for most of the violations committed by respondent is five years of probation.

The Guidelines also enumerate aggravating and mitigating factors to be considered. In this case, there is one aggravating factor: "evidence that the unlawful act was part of a pattern of practice." The evidence established two fraudulent smog certifications, which occurred due to respondent's sloppy practices. In mitigation, respondent has no prior history of license discipline.

Respondent acknowledges he was not performing inspections in compliance with the Smog Check Manual's requirements, which led to the issuance of fraudulent certifications. Notwithstanding these violations, it is determined that respondent is an appropriate candidate for probation. Respondent has moved to another smog inspection shop where he is now working at a less rushed pace and thus should be better able to focus on following the required procedures for each inspection.

Upon consideration of the record as a whole, it is determined that allowing respondent to keep his license 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.

ORDER

It is hereby ordered that Smog Check Inspector License Number EO 634177 and Smog Check Repair Technician License Number EI 634177 issued to respondent Antoine De Shawn Bracy, Sr., are revoked. However, the revocation is stayed and respondent is placed on probation for five years on the terms and conditions set forth below. No costs are imposed against respondent.

1. Obey All Laws

During the period of probation, respondent shall comply with all federal and state statutes, regulations and rules governing all 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 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 license 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 license expires during a term of probation, by operation of law or otherwise, then upon renewal respondent's license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active license during the period of probation shall also constitute a violation of probation.

8. Completion of Probation

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

9. 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 license, or apply for a new 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 license at any time after that date, respondent must meet all current requirements for licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

10. Training Course

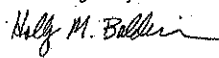
During the period of probation, respondent shall attend and successfully complete a BAR-specified and approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and respondent

shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

11. Notification to Employer

When performing services that fall within the scope of his license, respondent shall provide each of his current or future employers a copy of the decision and the underlying Accusation before commencing employment. Notification to respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

DATED: February 5, 2019

DocuSigned by:

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HOLLY M. BALDWIN
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 79/18-1945

13 **VIKRAMDEEP SINGH RANDHAWA –**
14 **PRESIDENT/SECRETARY/TREASURER,**
15 **BAYSMOGSTERS, INC. dba CHEAP**
16 **SMOG TEST**
17 **1205 Petaluma Hill Road**
18 **Santa Rosa, CA 95404**

A C C U S A T I O N

16 Mailing Address
17 31995 Trevor St.
Hayward, CA 94544

18 Automotive Repair Dealer Registration No.
ARD 283472
19 Smog Check, Test Only Station No. TC
20 283472

21 **MARIO ITURBE**
22 1317 Stroven Lane
Santa Rosa, CA 95407

23 Smog Check Inspector License No. EO
635295

24 ///

25 ///

26 ///

27 ///

1 ANTOINE DE SHAWN BRACY SR.
2 P.O. Box 2183
3 Suisun, CA 94533

4 Smog Check Inspector License No. EO
634177

5 Smog Check Repair Technician License No.
6 EI 634177 (former Advanced Emission
Specialist License No. EA634177)

7 Respondents.
8

9 Complainant alleges:

10 **PARTIES**

11 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
12 the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

13 2. On or about April 28, 2016, the Bureau issued Automotive Repair Dealer Registration
14 Number ARD 283472 to Vikramdeep Singh Randhawa – President/Secretary/Treasurer,
15 Baysmogsters, Inc. dba Cheap Smog Test (Respondent Baysmogsters). The Automotive Repair
16 Dealer Registration was in full force and effect at all times relevant to the charges brought in this
17 Accusation and will expire on April 30, 2019, unless renewed.

18 3. On or about May 12, 2016, the Bureau issued Smog Check, Test Only Station
19 Number TC 283472 to Respondent Baysmogsters. The Smog Check, Test Only Station number
20 was in full force and effect at all times relevant to the charges brought in this Accusation and will
21 expire on April 30, 2019, unless renewed.

22 4. On or about March 11, 2013, the Bureau issued Smog Check Inspector License No.
23 EO 635295 to Mario Iturbe (Respondent Iturbe). The smog check inspector license was in full
24 force and effect at all times relevant to the charges brought in this Accusation and will expire on
25 May 31, 2019, unless renewed.

26 5. On or about April 4, 2012, the Bureau issued Advanced Emission Specialist
27 Technician License Number EA 634177 to Antoine De Shawn Bracy Sr. (Respondent Bracy).
28 Respondent Bracy's advanced emission specialist technician license was due to expire on March

1 31, 2014, but was cancelled on March 5, 2014. Pursuant to California Code of Regulations, title
2 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent Bracy's
3 election, as Smog Check Inspector License EO 634177 and Smog Check Repair Technician
4 License EI 634177, effective March 5, 2014.¹ Respondent Bracy's Smog Check Inspector
5 License was in full force and effect at all times relevant to the charges brought in this Accusation
6 and will expire on March 31, 2020, unless renewed. Respondent Bracy's Smog Check Repair
7 Technician License was in full force and effect at all times relevant to the charges brought in this
8 Accusation and expired on March 31, 2016.

9 JURISDICTION

10 6. This Accusation is brought before the Director of the Department of Consumer
11 Affairs (Director) for the Bureau under the authority of the following laws.

12 7. Section 9884.13 of the Business and Professions Code provides, in pertinent part, that
13 the expiration of a valid registration shall not deprive the Director or chief of jurisdiction to
14 proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision
15 invalidating a registration temporarily or permanently.

16 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
17 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
18 the Motor Vehicle Inspection Program.

19 9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
20 expiration or suspension of a license by operation of law, or by order or decision of the Director,
21 or a court of law, or the voluntary surrender of the license, shall not deprive the Director of
22 jurisdiction to proceed with disciplinary action.

23 10. Section 44072.8 of the Health and Safety Code states: "When a license has been
24 revoked or suspended following a hearing under this article, any additional license issued under
25 this chapter in the name of the licensee may be likewise revoked or suspended by the director."

26
27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and Smog Check Repair Technician (EI) license.

STATUTORY AND REGULATORY PROVISIONS

11. Section 9884.7 of the Code states, in pertinent part:

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

“(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

...

“(4) Any other conduct that constitutes fraud.

...

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

12. Section 44012 of the Health and Safety Code requires that tests at smog check stations be performed in accordance with procedures prescribed by the department.

13. Section 44059 of the Health and Safety Code states, in pertinent part:

“The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

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

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

1 “(a) Violates any section of this chapter and the regulations adopted pursuant to it, which
2 related to the licensed activities.

3 ...

4 “(c) Violates any of the regulations adopted by the director pursuant to this chapter.

5 “(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.”

6 15. California Code of Regulations, title 16, section 3340.24, subdivision (c) states: “The
7 bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the
8 licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of
9 noncompliance.”

10 16. California Code of Regulations, title 16, section 3340.30 states, in pertinent part:

11 “A licensed smog check inspector and/or repair technician shall comply with the following
12 requirements at all times while licensed:

13 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
14 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
15 article.”

16 17. California Code of Regulations, title 16, section 3340.35, subdivision (c) states: “A
17 licensed station shall issue a certificate of compliance or noncompliance to the owner or operator
18 of any vehicle that has been inspected in accordance with the procedures specified in section
19 3340.42 of this article and has all the required emission control equipment and devices installed
20 and functioning correctly.”

21 18. California Code of Regulations, title 16, section 3340.41, subdivision (c) states: “No
22 person shall enter into the emissions inspection system any vehicle identification information or
23 emission control system identification data for any vehicle other than the one being tested. Nor
24 shall any person knowingly enter into the emissions inspection system any false information
25 about the vehicle being tested.”

26 19. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part:

27 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
28 section 3340.45.

“(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

• • •

“(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer. The OBD test failure criteria are specified in section 3340.42.2.

“(b) In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

“(1) A visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed.

“(2) A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation.”

COSTS

20. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL SUMMARY

21. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission Inspection System (EIS) for testing of 2000 model year and newer gas powered vehicles 14,000 Gross Vehicle Weight Rating and under.

22. The new BAR-OIS smog inspection uses a Data Acquisition Device (DAD), a computer, a bar code scanner, and printer. The DAD is a scan tool that retrieves On Board Diagnostic-generation II (OBD II) data from the vehicle's OBD II computer. The DAD connects

1 the BAR OIS computer to the vehicle's diagnostic link connector (DLC). The bar code scanner is
2 used to input technician information, the vehicle identification number (VIN), and DMV renewal
3 information. The printer is used to print Vehicle Inspection Reports.

4 23. The VIN that is physically present on all vehicles is also required to be programmed
5 into the vehicle's OBD II computer on 2005 and newer vehicles, and on many occasions was
6 programmed into the OBD II computer in earlier model years. This electronically programmed
7 VIN is referred to as the "eVIN" and is captured during a smog inspection. The eVIN should
8 match the physical VIN on the vehicle.

9 24. The OBD II communication protocol describes the specified communication
10 language used by the OBD II computer to communicate with the scan tools and other devices
11 such as the BAR-OIS. The communication protocol is programmed into the OBD II computer
12 during manufacture of the vehicle and does not change.

13 25. Parameter Identifications (PIDs) are data points reported by a vehicle's OBD II
14 system. Each make and model of vehicle reports a specific number of PIDs when it is being
15 tested by the BAR-OIS. The PID Count is the number of data points reported by the OBD II
16 system. The PIDs and PID Count are programmed during the manufacture of a vehicle.

17 26. Data retrieved and recorded during a BAR-OIS smog inspection include the eVIN,
18 the communication protocol, and the PID Count. This information is transmitted to the vehicle
19 information database during a smog inspection.

20 27. In or around January 2018, the Bureau initiated an investigation of Respondent
21 Baysmogsters. Beginning on or about February 9, 2017, and continuing until on or about January
22 22, 2018, Respondents were found to have performed five (5) fraudulent smog inspections using
23 clean-plugging methods. Clean-plugging is the practice of testing one OBD II system that would
24 pass the smog inspection for the purpose of fraudulently issuing a smog certificate of compliance
25 to another vehicle that would not pass the smog inspection and/or is not present for testing. The
26 vehicle receiving the certificate of compliance is not actually tested by the DAD during the smog
27 inspection.

28 28. A Bureau representative reviewed data for the vehicles inspected and certified by

1 Respondents. The data revealed that the five vehicles that were purportedly tested by
2 Respondents were not and could not have been connected to the DAD when they were being
3 certified because the OBD II data purportedly transmitted by those vehicles could not have been
4 transmitted by those vehicles.

5 29. The PID Counts for the five vehicles purportedly being tested did not match the
6 expected PID Counts for those vehicles. The eVINs and communication protocols for the five
7 vehicles purportedly being tested were not what they should have been.

8 30. Respondent Iturbe clean-plugged three (3) vehicles, resulting in the issuance of three
9 fraudulent Smog Check Certificates of Compliance. The vehicles were clean-plugged as follows:

Clean Plug 1	Cert. # ZP453635C	eVIN	Protocol	PID Count
	Fraudulent Inspection 2/9/2017	WVWPD63B04E062106	KWPS	18/5
	Expected Value ²	1G4HP52K134153876	JVPW	19
Clean Plug 2	Cert. # ZR082153C	eVIN	Protocol	PID Count
	Fraudulent Inspection 3/4/2017	WVWEK73CX7P095084	ICAN11bt5	37/14
	Expected Value	Not expected	1914	18 or 18/5
Clean Plug 3	Cert. # HJ528533C	eVIN	Protocol	PID Count
	Fraudulent Inspection 11/24/2017	4S4BRBCC9E3324761	ICAN11bt5	46/3
	Expected Value	Not expected	1914	18

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28 ² Expected value is the value recorded for "like vehicles" inspected.

31. Respondent Bracy clean-plugged two (2) vehicles, resulting in the issuance of two fraudulent Smog Check Certificates of Compliance. The vehicles were clean-plugged as follows:

Clean Plug 4	Cert. # ZZ085294C	eVIN	Protocol	PID Count
	Fraudulent Inspection 7/7/2017	JF2SJAHC2FH823955	ICAN11bt5	48/3
	Expected Value	JF1SG67625H705561	KWPF	19 or 19/3
Clean Plug 5	Cert. # HL623947C	eVIN	Protocol	PID Count
	Fraudulent Inspection 1/22/2018	IFBNE31L26HA32349	ICAN11bt5	46
	Expected Value	IFTNS24L51HA87641	JPWM	19

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements - Registration)

32. Respondent Baysmogsters has subjected its registration to discipline under section 9884.7, subdivision (a)(1) of the Code, in that it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading, as set forth above in paragraphs 27-31. Respondent Baysmogsters purported to test the five vehicles and certified that the vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents conducted the inspections on those vehicles using clean-plugging methods.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

33. Respondent Baysmogsters has subjected its registration to discipline under section 9884.7, subdivision (a)(4) of the Code, in that it committed acts which constitute fraud, as set forth above in paragraphs 27-31.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of the Motor Vehicle Inspection Program – Station License)**

3 34. Respondent Baysmogsters has subjected its station license to discipline under Health
4 and Safety Code section 44072.2, subdivisions (a) and (c), in that it violated sections of that Code
5 and applicable regulations, as set forth above in paragraphs 27-31, as follows:

6 a. **Health and Safety Code Section 44012:** Respondent Baysmogsters failed to ensure
7 that the emission control tests were performed on the vehicles in accordance with procedures
8 prescribed by the Department.

9 b. **California Code of Regulations, title 16, Section 3340.24, subdivision (c):**
10 Respondent Baysmogsters falsely or fraudulently issued electronic certificates of compliance for
11 the vehicles without performing bona fide inspections of the emission control devices and
12 systems on the vehicles as required by Health and Safety Code section 44012.

13 c. **California Code of Regulations, title 16, Section 3340.35, subdivision (c):**
14 Respondent Baysmogsters issued electronic certificates of compliance to the vehicles even though
15 the vehicles had not been inspected in accordance with section 3340.42.

16 d. **California Code of Regulations, title 16, Section 3340.42:** Respondent
17 Baysmogsters failed to conduct the required smog tests and inspections on the vehicles in
18 accordance with the Bureau's specifications.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Dishonesty, Fraud, or Deceit – Station License)**

21 35. Respondent Baysmogsters has subjected its station license to discipline under Health
22 and Safety Code section 44072.2, subdivision (d), in that it committed acts involving dishonesty,
23 fraud, or deceit whereby another was injured by issuing electronic certificates of compliance to
24 vehicles without performing bona fide inspections of the emission control devices and systems on
25 those vehicles, thereby depriving the People of the State of California of the protection afforded
26 by the Motor Vehicle Inspection Program, as set forth above in paragraphs 27-31.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of the Motor Vehicle Inspection Program -- Smog Check Licenses)**

3 36. Respondent Iturbe and Respondent Bracy have subjected their Smog Check Inspector
4 and Smog Check Repair Technician Licenses to discipline under Health and Safety Code section
5 44072.2, subdivisions (a) and (c), in that they violated sections of that Code and applicable
6 regulations, as set forth above in paragraphs 27-31, as follows:

7 a. **Health and Safety Code Section 44012:** Respondent Iturbe and Respondent Bracy
8 failed to ensure that the emission control tests were performed on the vehicles in accordance with
9 procedures prescribed by the Department.

10 b. **Health and Safety Code Section 44059:** Respondent Iturbe and Respondent Bracy
11 willfully made false entries on the electronic certificates of compliance by certifying that the five
12 vehicles had been inspected as required when, in fact, they had not.

13 c. **California Code of Regulations, title 16, Section 3340.30, subdivision (a):**
14 Respondent Iturbe and Respondent Bracy failed to inspect and test the vehicles in accordance
15 with Health and Safety Code section 44012.

16 d. **California Code of Regulations, title 16, Section 3340.41, subdivision (c):**
17 Respondent Iturbe and Respondent Bracy entered into the emissions inspection system vehicle
18 identification information or emission control system identification data for vehicles other than
19 the ones being tested, and/or they knowingly entered into the emissions inspection system false
20 information about the vehicles being tested.

21 e. **California Code of Regulations, title 16, Section 3340.42:** Respondent Iturbe and
22 Respondent Bracy failed to conduct the required smog tests and inspections on the vehicles in
23 accordance with the Bureau's specifications.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Dishonesty, Fraud, or Deceit -- Smog Check Licenses)**

26 37. Respondent Iturbe and Respondent Bracy have subjected their Smog Check Inspector
27 and Smog Check Repair Technician Licenses to discipline under Health and Safety Code section
28 44072.2, subdivision (d), in that they committed acts involving dishonesty, fraud, or deceit

1 whereby another was injured when they willfully made false entries on the electronic certificates
2 of compliance and certified that the vehicles had been inspected as required when, in fact, they
3 had not, as set forth above in paragraphs 27-31.

4 DISCIPLINE CONSIDERATIONS

5 38. To determine the degree of discipline, if any, to be imposed on Respondent
6 Baysmogsters, Complainant alleges that on or about December 23, 2016, the Bureau issued
7 Citation No. C2016-2417 to Respondent Baysmogsters. The Citation became effective on
8 February 23, 2017. That Citation is now final and is incorporated by reference as if fully set forth
9 in this Accusation.

10 39. To determine the degree of discipline, if any, to be imposed on Respondent Iturbe,
11 Complainant alleges that on or about December 23, 2016, the Bureau issued Citation No. M2016-
12 2418 to Respondent Iturbe. The Citation became effective on February 23, 2017. That Citation is
13 now final and is incorporated by reference as if fully set forth in this Accusation.

14 OTHER MATTERS

15 40. Pursuant to section 9884.7, subdivision (c) of the Code, the Director may suspend,
16 revoke, or place on probation the registrations for all places of business operated in this state by
17 Respondent Baysmogsters upon a finding that Respondent Baysmogsters has, or is, engaged in a
18 course of repeated and willful violations of the laws and regulations pertaining to an automotive
19 repair dealer.

20 41. Pursuant to Health & Safety Code section 44072.8, if Respondent Baysmogsters's
21 Station License is revoked or suspended, any additional license issued under Chapter 5 of Part 5
22 of Division 26 of the Health and Safety Code in the name of Respondent Baysmogsters may be
23 likewise revoked or suspended by the Director.

24 42. Pursuant to Health & Safety Code section 44072.8, if Respondent Iturbe's and
25 Respondent Bracy's Smog Check Inspector Licenses or Smog Check Repair Technician Licenses
26 are revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26
27 of the Health and Safety Code in the name of Respondent Iturbe or Respondent Bracy may be
28 likewise revoked or suspended by the Director.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 283472 issued to Vikramdeep Singh Randhawa – President/Secretary/Treasurer, Baysmogsters, Inc. dba Cheap Smog Test;

2. Revoking or suspending Smog Check Test Only Station License Number TC 283472 issued to Vikramdeep Singh Randhawa – President/Secretary/Treasurer, Baysmogsters, Inc. dba Cheap Smog Test;

3. Revoking or suspending any additional Automotive Repair Dealer registrations or Smog Check Station licenses issued to Vikramdeep Singh Randhawa – President/Secretary/Treasurer, Baysmogsters, Inc. dba Cheap Smog Test;

4. Revoking or suspending Smog Check Inspector License EO 635295 issued to Mario Iturbe;

5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Mario Iturbe;

6. Revoking or suspending Smog Check Inspector License EO 634177 and Smog Check Repair Technician License EI 634177 issued to Antoine De Shawn Bracy Sr.;

7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Antoine De Shawn Bracy Sr.;

8. Ordering Vikramdeep Singh Randhawa – President/Secretary/Treasurer, Baysmogsters, Inc. dba Cheap Smog Test, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;

9. Ordering Mario Iturbe to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;

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1 10. Ordering Antoine De Shawn Bracy Sr. to pay the Bureau of Automotive Repair the
2 reasonable costs of the investigation and enforcement of this case pursuant to Business and
3 Professions Code section 125.3;

4 11. Taking such other and further action as deemed necessary and proper.

5
6 DATED: May 22, 2018 Patrick Dorais

7 PATRICK DORAIS
8 Chief
9 Bureau of Automotive Repair
10 Department of Consumer Affairs
11 State of California
12 *Complainant*

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