

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

In the Matter of the Accusation Against:

ANGEL ALONSO, aka ANGEL ALONSO PARRA dba ANAHEIM SMOG

1202 E. Lincoln Avenue

Anaheim, CA 92805

Automotive Repair Dealer Registration No. ARD 288993

Smog Check Test Only Station License No. TC 288993

ANGEL ALONSO PARRA

611 W. Victor Avenue

Anaheim, CA 92801

and

511 N. Philadelphia St. Apt. 203

Anaheim, CA 92805

Smog Check Inspector License No. EO 638929

Respondents.

Case No. 79/20-9348

DECISION

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

This Decision shall be effective on August 16, 2022.

IT IS SO ORDERED this 7 day of July, 2022.



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

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In the Matter of the Accusation Against:

**ANGEL ALONSO aka ANGEL ALONSO PARRA dba ANAHEIM
SMOG**

**Automotive Repair Dealer Registration No. ARD 288993
Smog Check, Test Only, Station License No. TC 288993,**

and

ANGEL ALONSO PARRA

Smog Check Inspector License No. EO 638929,

Respondents

Agency Case No. 79/20-9348

OAH No. 2021090429

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter by videoconference on May 11, 2022.

Craig Menchin, Deputy Attorney General, Department of Justice, State of California, represented complainant Patrick Dorais, Chief, Bureau of Automotive Repair (bureau), Department of Consumer Affairs.

William D. Ferreira, Attorney, Automotive Defense Specialists, represented respondent Angel Alonso aka Angel Alonso Parra dba Anaheim Smog and Angel Alonso Parra, who was assisted by a court-certified Spanish-language interpreter.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 11, 2022.

SUMMARY

Complainant sought discipline of Mr. Parra's automotive repair dealer registration, smog only testing station license, and smog inspector license based on allegations that respondent made untrue and misleading statements, engaged in dishonesty or deceit or fraud, and failed to comply with the Automotive Repair Act (ARA) and the Motor Vehicle Inspection Program, when he fraudulently documented and charged a fee for 36 smog check inspections that were not issued or received by the customers.

Complainant failed to sustain its burden of proof regarding the allegations of fraud and engaging in dishonesty or deceit or fraud. Complainant did sustain its burden regarding respondent's making untrue and misleading statements and violating the ARA and Motor Vehicle Inspection Program. Public protection will be afforded by placing respondent's Automotive Repair Station registration, Smog Check, Test Only, Station license, and smog check inspector license on probation for two

years with appropriate terms and conditions. Additionally, Mr. Parra shall pay investigation and prosecution costs of \$2,000.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 21, 2016, the bureau issued Smog Check Inspector License No. EO 638929 to respondent. The license will expire on May 31, 2022, unless renewed. On November 20, 2017, the bureau issued Automotive Repair Dealer (ARD) Registration No. ARD 288993 to respondent. The registration will expire on November 30, 2022, unless renewed. On January 9, 2018, the bureau issued Smog Check, Test Only, Station License No. TC 288993 to respondent. The license will expire on November 30, 2022, unless renewed. On September 16, 2020, the bureau certified Anaheim Smog (or station) as a STAR Station. The certification will remain active unless the ARD registration and/or Smog Check, Test Only, Station license is revoked, cancelled, becomes delinquent or certification is invalidated.

2. On July 12, 2021, complainant signed the accusation in his official capacity. The accusation alleged that respondent's registration and licenses are subject to discipline because he made untrue or misleading statements, engaged in dishonesty or deceit or fraud, failed to comply with the ARA, and failed to comply with regulations pursuant to the Motor Vehicle Inspection Act, when he fraudulently documented and charged a fee for a smog check certificate that was not issued or received by the customer.

3. As a disciplinary consideration, the accusation alleged that on July 15, 2019, the bureau issued respondent Administrative Citation #C2019-1684 because

respondent inspected and certified a bureau vehicle documented to fail a properly performed smog check inspection. Respondent was advised that future violations of the ARA may result in disciplinary action, which could jeopardize his registration and smog station license.

There is no history of discipline against respondent's licenses or registration. A citation issued by the bureau is not a disciplinary action.

California's Smog Check Program

4. California's smog check program is designed and intended to reduce air pollution by identifying and requiring repair of polluting motor vehicles. The smog check technician performs visual and functional tests of the vehicle using either the BAR97 emissions inspection system (EIS) or the BAR-On Board Inspection System (OIS), depending on the vehicle's age. The OIS is required when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The OIS system consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is an On-Board Diagnostic (OBD) scan tool that connects between the OIS computer and the vehicle's Diagnostic Link Connector (DLC). The OIS software requires continuous internet connection when performing a smog check inspection to enable the OIS software to communicate with the bureau's central database. The bar code scanner is used to input technician information, the vehicles identification number (VIN), and Department of Motor Vehicles (DMV) renewal information. The printer provides a Vehicle Inspection Report (VIR), which is a physical record of the test results and shows the Certificate of Compliance control number for passing vehicles.

If the vehicle passes the visual and functional, EIS or OIS, tests, it passes the overall inspection, and the smog check results are transmitted electronically to the Vehicle Information Database (VID). The database contains information such as registration data, emissions control system data, smog check history, vehicle profiling data, station and technician data, and certificate data. Each certificate of compliance has a unique control number and can be tracked to determine which smog station issued it and to which vehicle it was issued. Both the DMV and the bureau can access information stored in the database. In particular, the bureau can access the database to view test data on smog inspections performed at a smog station or retrieve and print records for a particular smog inspection.

The smog check technician must sign the VIR under penalty of perjury to indicate that the inspection was done within bureau guidelines. Smog check stations are required by law to maintain a copy of the VIR along with a copy of the repair invoice for three years. Licensed smog check technicians are the only persons authorized by the bureau to perform official inspections. They are issued a personal access code and a license which are used to gain access to the inspection system to perform smog check inspections. Unauthorized use of another technician's access code or license is prohibited.

The Bureau's Investigation

MARC ORTEGA'S INVESTIGATION REPORT, INSPECTION REPORTS, AND TESTIMONY

5. Marc Ortega is employed by the bureau as a Program Representative II. The following is a summary of his investigation report, inspection reports, and testimony.

6. On June 14, 2019, the bureau electronically monitored the smog check activity at the station and observed "anomalies" in the data that was transmitted. On June 14, 2019, Mr. Ortega, Mark Casillas, a Program Representative III, and Nicholas Magaña, a Program Representative II, performed a station inspection. When they arrived at the station, they observed smog technician Pedro Fonseca conducting a smog test on a 2007 Mini Cooper, using an electronic defeat device. An electronic defeat device simulates smog check data for a vehicle that does not meet smog requirements.

7. On June 21, 2019, a Proactive Hearing Conference was held at the station, with respondent, Mr. Fonseca, Mr. Ortega, and Mr. Casillas, participating. The conference was held to make respondent aware of violations found during a review of smog check data and the subsequent station inspection. Respondent was advised that several certificates of compliance were issued by the station with the aid of an electronic defeat device, in violation of Health and Safety Code section 44012. Respondent was advised that he and all employees must follow the current Smog Check Manual and Smog Check Reference Guide along with all laws and regulations pertaining to the ARA. Respondent was advised that this conference was held to obtain future voluntary compliance and future violations of the ARA may result in disciplinary action.

8. On June 26, 2019, Mr. Ortega and Mr. Casillas performed a station inspection and reviewed the smog check equipment. The inspectors advised respondent and Mr. Fonseca to follow all laws and regulations.

9. On December 04, 2019, in response to anomalies in the data transmitted during a smog check inspection, Mr. Casillas and Mr. Magaña performed a station inspection. Respondent was not able to provide the inspectors with invoices for the

test period of November 20, 2019, through November 22, 2019. The inspectors advised Mr. Fonseca to perform smog check inspections in accordance with laws, regulations, and the Smog Check Inspection Manual.

10. On April 8, 2020, Mr. Ortega visited Anaheim Smog in response to an automatic BAR97 lockout due to a "cabinet/disk drive tamper." Mr. Fonseca provided a repair invoice for the BAR97; Mr. Ortega cleared the lockout.

11. On May 4, 2020, in response to an automatic (DAD) lockout, Mr. Ortega and Mr. Casillas performed a station inspection. In his inspection report, Mr. Ortega wrote: "Record review found multiple invoices indicating 'retest' in estimate box and in the price description area leading to false and misleading records, invoice for 2005 Chevy Express 8D05873 and invoice for 2012 Honda Civic 7XAT715 do not contain authorization." Mr. Ortega (or one of the inspectors) took photographs of these invoices and VIRs for these two vehicles. The inspectors advised respondent and Mr. Fonseca to follow all laws and regulations and perform all smog check inspections thoroughly and completely.

12. On June 3, 2020, in response to an automatic BAR97 lockout, Mr. Ortega and Mr. Casillas visited the station. They found the BAR97 malfunctioning and advised respondent to contact the bureau office to reschedule the station inspection after the BAR97 had been repaired.

13. On June 17, 2020, Mr. Magaña and Ian Evans, Program Representative II, performed a follow-up inspection at the station. They noted the following: the BAR97 dynamometer failed calibration and required service; several VIRs were not signed by the smog check inspector; several invoices lacked customer information; invoice

pricing was unclear; and one invoice reflected a charge for a certificate of compliance that was not issued.

14. On August 4, 2020, in response to an automatic BAR97 lockout, Mr. Ortega and Mr. Magaña visited the station. The inspectors advised respondent that numerous invoices and estimate violations were found. The inspectors advised respondent and Mr. Fonseca that all vehicles are to be inspected thoroughly and accurately, and that future violations and failure to comply with laws and regulations may result in disciplinary action.

16. On November 19, 2020, Mr. Ortega and Mr. Magaña visited the station. In his inspection report, Mr. Ortega wrote: "Alonso stated the station's invoices show the dollar amounts charged by Anaheim Smog and is the same amount paid by the customers to Anaheim Smog, including all Anaheim Smog invoices with attached VIR provided by Alonso for dates June 22, 2020, through July 22, 2020."

17. At the hearing, Mr. Ortega stated that a customer must receive an itemized estimate before the work begins. The invoices he reviewed with the words "retest" and no dollar amounts listed were "a problem" because it is "not clear what a customer is going to get." If a certificate is issued, the cost is \$8.25 for the certificate.

In reviewing all invoices respondent provided, Mr. Ortega found 36 invoices (Exhibits 17 through 52) that listed an estimate of \$41.75 for a smog inspection and \$8.25 for a certificate, for a total of \$50.00. Attached to each invoice was a VIR, indicating the vehicle did not pass inspection, so a certificate was not issued. Mr. Fonseca conducted all smog inspections in this group of invoices. Mr. Ortega asked respondent if the records reflected the amount the customer paid, and he said, "Yes." Respondent did not provide other documents that showed the customer paid

anything different. Respondent did not say that the certificate fee of \$8.25 was not charged if a vehicle failed the inspection.

Respondent's station uses a three-part form. The pink copy is the estimate or work order given to the customer, the yellow copy becomes the invoice for the customer, and the white copy stays with the station. The total on the invoice should be \$41.75 if the vehicle failed inspection.

On cross-examination, Mr. Ortega said that respondent provided him with about 30 days of records. Mr. Ortega did not recall the total number of invoices respondent provided but he [Mr. Ortega] pulled about 36 invoices from those records "that had issues." When he asked respondent what "the invoices" reflected, he [Mr. Ortega] was asking about "all" the invoices. He did not ask respondent if he charged for certificates that were not issued. Respondent did not say that he charged \$8.25 when a certificate was not issued.

Mr. Ortega was shown an invoice for a customer named J.C. (Exhibit 17), which showed an estimate of \$41.75 for a smog inspection and \$8.25 for a certificate, for a total of \$50.00. Attached to the estimate was a VIR reflecting that J.C.'s vehicle failed the smog inspection. Mr. Ortega acknowledged that he had no information that J.C. actually paid \$50. When asked how he knew that these 36 customers paid \$50.00 rather than \$41.75, Mr. Ortega responded, "from respondent's statement." Mr. Ortega testified that his response is the same for all invoices (Exhibits 17 through 52).

Respondent's Testimony

18. Respondent has been performing smog inspections for about four years. The July 2019 citation issued to the station is the only discipline he received from the bureau. Respondent has never been disciplined personally as a smog inspector. (As

stated in Factual Finding No. 3, citations issued by the bureau are not disciplinary actions.)

Mr. Ortega asked him for "a months' worth" of invoices. Respondent estimated his shop completes 15 to 25 inspections per day, and estimated he gave Mr. Ortega about 400 to 500 invoices for the one-month period. Mr. Ortega showed respondent two or three invoices and asked what he charges his clients. Respondent said that he charges \$41.75 for the inspection, and \$8.25 for a certificate only if they pass inspection. He sometimes accepts \$41.75 for the inspection and the certificate when a vehicle passes inspection, and the customer does not pay the additional \$8.25. He understands that it is illegal to charge the \$8.25 if a vehicle fails inspection. If a vehicle fails inspection, he gives his customers 30 days to repair their vehicle and return for a free second test. The invoices read "retest" only because there is no charge unless the vehicle passes, and then the customer is charged \$8.25 for a certificate.

Respondent was shown two invoices that showed the same vehicle and the VIRs showed the vehicles were inspected at the same time. He said Mr. Fonseca brought a friend to the shop to help fill out paperwork, and the friend erroneously completed the estimates/invoices for Mr. Fonseca. He believes the friend's name was "Carlos." Respondent did not pay Carlos and he does not know the arrangement between Mr. Fonseca and Carlos. Carlos had no access to other paperwork.

Mr. Ortega asked him how he charged his customers, and respondent told Mr. Ortega that he charged \$41.75 when a vehicle did not pass smog inspection. He heard Mr. Ortega's testimony that he (respondent) said all invoices were correct, respondent does not know why Mr. Ortega said this. Respondent accepts cash only, no checks or credit cards. He keeps track of money the station receives. He has a record when he was paid \$41.75. When asked why he did not submit those records, he said, "if you

need evidence, I have records to show what was charged on that day." He keeps track of what customers pay, and if they pay \$41.75, he records \$41.75.

Costs of Investigation and Prosecution

19. Complainant sought recovery of investigation costs of \$2,479.15, and prosecution costs of \$10,596.25, for a total of \$13,075.40.

20. Marc Ortega, Program Representative II, signed a declaration with attached Case Hours and Costs Spreadsheets that listed the time he spent between August 5, 2020, and October 21, 2020, performing "Review" (9 hours) and "Report Writing" (12 hours) on this matter. The total time he spent was 21 hours and at the hourly rate of \$89.37, for a total of \$1,876.77. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$1,876.77 costs requested were reasonable.

21. Mark Casillas, Program Representative III, signed a declaration with attached Case Hours and Costs Spreadsheets that listed the time he spent between August 4, 2020, and October 23, 2020, performing "Case Review" (4.25 hours) and "Documents/Evidence" (2 hours) on this matter. The total time he spent was 6.25 hours and at the hourly rate of \$96.38, for a total of \$602.38. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$602.38 costs requested were reasonable.

22. The Deputy Attorney General who prosecuted the case executed a declaration, dated May 11, 2022, requesting prosecution costs of \$10,596.25 through May 10, 2022. Attached to his declaration was a document entitled "Matter Time Activity by Professional Type," that identified the tasks performed, the time spent on each task, and the hourly rate of the persons performing the tasks through May 10,

2022. The declaration and the attachment seeking prosecution costs of \$10,596.25 complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), and those prosecution costs were reasonable.

Closing Arguments

COMPLAINANT

23. Complainant argued that the investigators requested 36 invoices for certificates that were not issued. Every invoice shows \$41.75 plus \$8.25 which equals \$50; the customers paid \$8.25 even if no certificate was issued. Mr. Ortega showed respondent two or three actual invoices and asked if the amounts reflected was the amount the customer paid, and respondent said, "Yes." Respondent claims Mr. Ortega now says something different. If in fact respondent did not charge the \$8.25, he could have or would have provided proof and this matter could have been resolved. Respondent is not credible. Complainant requests revocation of respondent's license; or at the very least, probation.

RESPONDENT

25. Respondent asserted that it is okay to say that he was anything but a model licensee, but this is not fraud. Mr. Ortega testified that the sole evidence that respondent's customers paid the \$8.25 when their vehicle had failed inspection was respondent's statement. Mr. Ortega took about 400 invoices and asked respondent if these accurately reflected what the customers paid. He then pulled 36 of these invoices and said these customers were charged \$8.25 after their vehicle failed inspection. If a vehicle fails inspection, the \$8.25 cannot be charged. Respondent said he fills the invoices out completely before he begins work and has the customers sign them. If the vehicle does not pass inspection, the customers are not charged the \$8.25.

Respondent further argued that seven of the eight causes for discipline require evidence of fraud. Fraud requires intentional willful conduct. The eighth cause alleges false and misleading conduct. There is no allegation that respondent did not charge for the certificates, the only allegation is that he charged \$8.25 when a vehicle did not pass inspection. There is no customer complaint, no undercover work. Respondent asserted that complainant failed to sustain its burden and the accusation should be dismissed.

LEGAL CONCLUSIONS

1. The main purpose of administrative disciplinary proceedings is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.

2. "Protection of the public shall be the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 9880.3.)

Burden and Standard of Proof

3. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 583.)

4. The standard of proof in a proceeding to discipline a smog check inspector license, a smog check station license, or an automotive repair dealer registration is the preponderance of the evidence. *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918; Evid. Code, § 115.)

5. "Preponderance of the evidence means evidence that has more convincing force than that opposed to it." [Citations.] (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*, italics in original.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

6. In a disciplinary proceeding, the burden of proof is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831,842-848.)

Relevant Code Sections

7. Business and Professions Code section 9884.7 provides in 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.

[¶] . . . [¶]

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

8. Health and Safety Code section 44072.2 states in 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:

[¶] . . . [¶]

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

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

Relevant Regulations

9. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

10. California Code of Regulations, title 16, section 3340.15, subdivision (e) states:

The station shall make, keep secure, and have available for inspection on request of the bureau, or its representative, legible records showing the station's transactions as a licensee for a period of not less than three years after completion of any transaction to which the records refer. All records shall be open for reasonable inspection and/or reproduction by the bureau or its representative. Station records required to be maintained shall include copies of:

- (1) All certificates of compliance and certificates of noncompliance in stock and/or issued,
- (2) Repair orders relating to the inspection and repair activities, and
- (3) Vehicle inspection reports generated either manually or by the emissions inspection system.

The above listed station records shall be maintained in such a manner that the records for each transaction are kept together, so as to facilitate access to those records by the bureau or its representative. In this regard, the second copy of an issued certificate shall be attached to the final invoice record.

Case Law Regarding Fraud

11. A cause of action for fraud requires the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 127, citations omitted.)

12. All the elements must be present in order for fraud to be found. There is no absolute or fixed rule for determining what facts will constitute fraud; whether it is found depends upon the particular facts of the case under inquiry. Fraud may be proved by direct evidence, or it may be inferred from all of the circumstances in the case. (*Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674-675.)

13. In an appeal from the decision issued in an administrative proceeding regarding a private investigator's license, the appellate court explained "[f]raud embraces multifarious means whereby one person gains an advantage over another and means in effect bad faith, dishonesty or overreaching. . . . 'It is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling and unfair ways by which another is cheated.' [Citations.]" (*Wayne v. Bureau of Private Investigators and Adjusters, Department of Professional and Vocational Standards* (1962) 201 Cal.App.2d 427, 437-438.)

Responsibility for Conduct of Employees

14. The law is well established that licensees who elect to operate their businesses through employees are responsible to the licensing authority for the conduct of their employees. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal3d 347, 360.) This rule is consistent with the law governing principal-agent liability contained in Civil Code section 2330 that "[a]n agent represents his principal for all purposes within the scope of his actual or ostensible authority. . . ." It is also consistent with the doctrine of respondeat superior codified in Civil Code section 2338, which provides that "a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal."

Evaluation of Causes for Discipline

FIRST CAUSE FOR DISCIPLINE - UNTRUE OR MISLEADING STATEMENTS

12. Cause does not exist to impose discipline against respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(1). Complainant established by a preponderance of the evidence that respondent *documented* a fee for a smog check certificate that was not issued or received by the customer. However, complainant failed to establish that respondent *charged* this fee. Respondent testified that customers were not charged and did not pay \$8.25 for a certificate when their vehicle failed inspection. No persuasive evidence was provided to refute this testimony. No evidence was provided that any customer actually paid the \$8.25 when their vehicle failed to pass inspection.

SECOND CAUSE FOR DISCIPLINE – FRAUD

13. Cause does not exist to impose discipline against respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(4). Complainant failed to establish by a preponderance of the evidence that respondent fraudulently documented and charged a fee for a smog check certificate that was not issued or received by the customer.

Thus, complainant failed to establish that respondent's actions were fraudulent. Fraud is never presumed, and the burden of proving it rests on the party who asserts it. (Code Civ. Proc., § 1963; *Dorn v. Pichinino* (1951) 105 Cal.App.2d 796, 801.)

THIRD CAUSE FOR DISCIPLINE - FAILURE TO COMPLY WITH THE AUTOMOTIVE REPAIR ACT

19. Cause exists to impose discipline against respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(6), for failure to comply with the Automotive Repair Act. Complaint established by preponderance of the evidence that respondent continued to violate laws despite being admonished. Bureau's investigation of respondent's station began when they observed "anomalies" in the data being transmitted, which led to 11 visits to respondent's station between June 2019, and November 2020. The following are samples of the bureau's station inspection reports:

June 14, 2019 - Bureau representatives observed Mr. Fonseca using an electronic defeat device and advised respondent that several certificates had been issued with the aid of this device, in violation of Health and Safety Code section 44012. A proactive hearing conference was held with respondent and Mr. Fonseca on June 21, 2019. Respondent was advised that he and his employees must follow the Smog Check Manual, the Smog Check Reference Guide, and laws and regulations pertaining to the ARA.

December 4, 2019 - During a station inspection, respondent was not able to provide invoices for the test period of November 20, 2019, through November 22, 2019. Mr. Fonseca was advised to perform smog check inspections in accordance with laws, regulations, and the Smog Check Inspection Manual.

May 4, 2020 - In response to an automatic DAD lockout, a review of station records found multiple invoices indicating "retest" with no price description, and two invoices that did not contain authorizations. Respondent and Mr. Fonseca were

advised to follow all laws and regulations and perform smog inspections thoroughly and completely.

June 3, 2020 – In response to an automatic BAR97 lockout, Mr. Ortega visited the station and found the BAR97 malfunctioning. He advised respondent to schedule a station inspection after the BAR97 had been repaired.

June 17, 2020 – Bureau representatives performed a follow-up inspection at the station. They found the BAR97 dynamometer failed calibration and required service; several VIRs were not signed, several invoices lacked customer information; invoice pricing was unclear.

Complainant failed to establish by a preponderance of the evidence that respondent fraudulently documented and charged a fee for a smog check certificate that was not issued or received by the customer.

**FOURTH CAUSE FOR DISCIPLINE - FAILURE TO COMPLY WITH REGULATIONS
PURSUANT TO THE MOTOR VEHICLE INSPECTION**

20. Cause exists to impose discipline against respondent's station license pursuant to Health and Safety Code section 44072.2, subdivision (c), because respondent failed to comply with California Code of Regulations, Title 16, section 3373.

Section 3373 provides that in filling out an estimate, invoice, or work order, a licensee shall not withhold or insert information which will cause the document to be false or misleading. Each of the 36 invoices pulled by the bureau reflected a total cost of \$50 and did not reflect that the \$8.25 certificate fee was not charged or paid because the vehicle had failed inspection. This failure to accurately reflect what the customer was charged and what was paid had the tendency or effect of misleading the

customer. Respondent testified that customers were not charged and did not pay the \$8.25 for a certificate when their vehicle failed inspection. No evidence was provided to refute this testimony. No evidence was provided that any customer paid the \$8.25 when their vehicle failed to pass inspection.

Complainant failed to establish by a preponderance of the evidence that respondent fraudulently documented and charged a fee for a smog check certificate that was not issued or received by the customer.

FIFTH CAUSE FOR DISCIPLINE – DISHONESTY, FRAUD, OR DECEIT

22. Cause does not exist to discipline respondent's station license pursuant to Health and Safety Code section 44072.2, subdivision (d), because complainant failed to establish by a preponderance of the evidence that respondent committed any act involving dishonesty, fraud, or deceit whereby another was injured.

Each of the 36 invoices pulled by the bureau reflected a total cost of \$50 - \$41.75 for inspection and \$8.25 for a certificate but did not reflect that the \$8.25 certificate fee was not charged or paid because the vehicle had failed inspection. Respondent testified that customers were not charged and did not pay the \$8.25 for a certificate when their vehicle failed inspection. No evidence was provided to refute this testimony. No persuasive evidence was provided that any customer paid the \$8.25 when their vehicle failed to pass inspection.

SIXTH CAUSE FOR DISCIPLINE – DISHONESTY, FRAUD, OR DECEIT

23. Cause does not exist to discipline respondent's smog check inspector license pursuant to Health and Safety Code section 44072.2, subdivision (d), because

complainant failed to establish by a preponderance of the evidence that respondent committed any act involving dishonesty, fraud, or deceit whereby another was injured.

Each of the 36 invoices pulled by the bureau reflected a total cost of \$50 - \$41.75 for inspection and \$8.25 for a certificate but did not reflect that the \$8.25 certificate fee was not charged or paid because the vehicle had failed inspection. Respondent testified that customers were not charged and did not pay the \$8.25 for a certificate when their vehicle failed inspection. No evidence was provided to refute this testimony. No evidence was provided that any customer paid the \$8.25 when their vehicle failed to pass inspection.

Complainant failed to establish by a preponderance of the evidence that respondent fraudulently documented and charged a fee for a smog check certificate that was not issued or received by the customer.

**SEVENTH CAUSE FOR DISCIPLINE - FAILURE TO COMPLY WITH REGULATIONS
PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM**

24. Cause exists to impose discipline against respondent's smog inspector license pursuant to Health and Safety Code section 44072.2, subdivision (c), because respondent failed to comply with California Code of Regulations, Title 16, section 3373.

Section 3373 provides that in filling out an estimate, invoice, or work order, a licensee shall not withhold or insert information which will cause the document to be false or misleading. Each of the 36 invoices pulled by the bureau reflected a total cost of \$50 and did not reflect that the \$8.25 certificate fee was not charged or paid because the vehicle had failed inspection. This failure to accurately reflect what the customer was charged and what was paid had the tendency or effect of misleading the customer. Respondent testified that customers were not charged and did not pay the

\$8.25 for a certificate when their vehicle failed inspection. No persuasive evidence was provided to refute this testimony. No evidence was provided that any customer paid the \$8.25 when their vehicle failed to pass inspection.

Complainant failed to establish by a preponderance of the evidence that respondent fraudulently documented and charged a fee for a smog check certificate that was not issued or received by the customer.

Authority Regarding Appropriate Level of Discipline

25. California Code of Regulations, title 16, section 3395.4, provides:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of Administrative Hearings, the Bureau of Automotive Repair shall consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev. June 2021] which are hereby incorporated by reference. The "Guidelines for Disciplinary Orders and Terms of Probation" are advisory. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion determines that the facts of the particular case warrant such deviation.

26. The guidelines state that factors in aggravation should be considered when determining the appropriate level of discipline, including: prior warnings and office conferences, history of citations or formal disciplinary action; failure to permit

inspection of records; abuse of mechanic's liens; attempts to intimidate consumers; negligent or willful improper repair work that endangers a consumer; whether an unlawful act was part of a pattern or practice; failure to comply with a request for corrective action/retraining; current probation for improper acts; failure to successfully complete a prior period of probation; failure to pay a court judgment to a victim; violation of previous court order(s); and any other conduct which constitutes fraud or gross negligence.

27. The guidelines also provide that the following factors in mitigation should be considered: evidence that respondent implemented suggested resolutions of a consumer complaint or paid restitution or made corrective repair of a consumer's vehicle; voluntary participation in retraining; voluntary purchase of proper diagnostic equipment and manuals; evidence of a temporary medical condition that prevented respondent from exercising supervision and control over employees or others, which led to the wrongdoing; absence of any prior discipline; absence of any loss or damage to consumers; evidence that the violation was not part of a pattern or practice; evidence that the shop owner has taken specific steps to minimize recurrence; resolution of consumer complaints with a subsequent change in business practice; and substantial measures to correct business practices and/or operations to minimize the likelihood of recurrence.

28. The guidelines contain recommendations for the minimum and maximum level of discipline. The maximum discipline for any violation is revocation and payment of the reasonable costs of investigation and prosecution. The guidelines also list minimum recommendations for the following violation:

- For failure to comply with the regulations in violation of Business and Professions Code section 9884.7, subdivision (a)(1), revocation, stayed,

suspension, and three years' probation, with optional conditions 1, 2, 3b, and/or 3c.

- For failure to comply with the regulations in violation of Business and Professions Code section 9884.7, subdivision (a)(6), revocation, stayed, suspension, and two years' probation, with optional conditions 1, 2, 3c, and/or 7.
- For failure to comply with the regulations in violation of Health and Safety Code section 44072, subdivision (c), revocation, stayed, suspension, and two years' probation, with optional conditions 1, 2, 3a, 3c, and/or 7.

Costs of Investigation and Prosecution

30. Business and Professions Code section 125.3, subdivisions (a), (b), and (d), provide:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

[¶] . . . [¶]

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a).

27. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court dealt with the issue of cost recovery, under a statute similar to Business and Professions Code section 125.3, and noted that because a licensee with limited financial resources might forego a hearing for fear that a board might erroneously sustain the charges and order the licensee to reimburse costs, discretion must be used to ensure that a licensee with a meritorious claim is not deterred from exercising his or her right to a hearing. (*Id.* at p. 44.) The Court determined that five factors should be considered when deciding whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and Professions Code section 125.3: Whether the licensee has been successful at hearing in having charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

28. After taking the *Zuckerman* factors into consideration, the investigation and prosecution costs shall be reduced to \$2,000. Respondent shall be permitted to pay the costs according to a payment plan approved by the bureau.

ORDER

1. The Smog Check Inspector License No. EO 638929 issued to Angel Alonso Parra is revoked. However, the revocation is stayed, and Smog Check Inspector License No. EO 638929 is placed on probation for two years on the terms and conditions listed below.

2. The Automotive Repair Dealer Registration No. ARD 288993 issued to Angel Alonso aka Angel Alonso Parra dba Anaheim Smog is revoked. However, the revocation is stayed, and Automotive Repair Dealer Registration No. ARD 288993 is placed on probation for two years on the terms and conditions listed below.

3. The Smog Check, Test Only, Station License No. TC 288993 issued to Angel Alonso aka Angel Alonso Parra dba Anaheim Smog is revoked. However, the revocation is stayed, and Smog Check, Test Only, Station License No. TC 288993 is placed on probation for two 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 the bureau registrations and licenses held by respondent.

B. Training Courses

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

Within 180 days of the effective date of a decision, Respondent shall submit to bureau satisfactory evidence of completion of a laws and regulations training course that meets the following requirements:

(1) The course shall be instructor-led, in a classroom or online setting, and shall include instruction on registrant or licensee compliance with the laws and regulations related to the following areas:

- (A) Estimate Requirements
- (B) Customer Authorization
- (C) Invoice Requirements
- (D) Accepted Trade Standards
- (E) Sublet Repair
- (F) Return of Parts
- (G) Advertising Requirements
- (H) Guarantees and Warranties
- (I) Maintenance of Records

(2) The course shall include an examination to verify the Respondent can apply the laws and regulations in daily automotive repair transactions.

(3) The course shall have a minimum of (8) eight hours of dedicated time to instruction and examination, where examination time shall be between thirty (30) minutes to an hour.

(4) The course shall require a minimum score of 70 percent on the examination to provide proof of completion.

C. Quarterly Reporting

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

D. 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 bureau during the period of probation, report any financial interest which respondent or any partners, officers, or owners of any respondent owned facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

E. 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. Respondents shall also provide bureau representatives unrestricted access to all records pursuant to bureau laws and regulations.

F. Tolling of Probation

If, during probation, respondent does business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify 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 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 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.

G. 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 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.

H. Maintain Valid License

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

effective, the registration must be renewed by respondent within 30 days of that date. If respondent's registration expires during a term of probation, by operation of law or otherwise, then upon renewal of respondent's registration, respondent shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration during the period of probation shall also constitute a violation of probation.

I. Cost Recovery

Respondent shall pay the "Bureau of Automotive Repair" \$2,000 for the reasonable costs of the investigation and prosecution of case No. 79/20-9348. Respondent shall make such payment based on a payment schedule established by the bureau. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the "Bureau of Automotive Repair" and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/20-9348. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

J. Completion of Probation

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

K. 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 the Respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision. Respondent may not petition the Director for reinstatement of the surrendered registration and/or license or apply for a new registration or license under the jurisdiction of the bureau at any time before the date of the originally scheduled completion of probation. If respondent applies to the bureau for a registration or license at any time after that date, respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to the bureau and left outstanding at the time of surrender.

L. Supervision Requirements

Respondent shall not delegate his supervisory duties, as they relate to the business activities relevant to the probationary registration, to another person during the period of probation. Any persons employed by respondent to carry out such business activities shall be directly supervised by respondent. In the event that a bona fide medical condition arises during the period of probation, which temporarily

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prevents respondent from exercising direct supervision over employees, notice and medical substantiation of the condition shall be submitted to bureau within ten (10) days of the medical affirmation of the condition.

DATE: June 13, 2022

Marion Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings