

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

In the Matter of the Accusation Against:

**GURPREET SINGH**  
1532 Blackbird Place  
Lodi, CA 95240

305 W. Lodi Ave (Mailing)  
Lodi, CA 95240

Smog Check Inspector License No.: EO  
153759  
Smog Check Repair Technician License No.:  
EI 153759  
Brake Adjuster License No.: BA 153759,  
Class C  
Lamp Adjuster License No.: LA 153759

and

Petition to Revoke Probation Against:

Smog Check Inspector License No.: EO  
153759  
Smog Check Repair Technician License No.:  
EI 153759

Respondent.

Case No.: 79/17-15365

OAH No.: 2018050474

**DECISION AFTER REJECTION OF PROPOSED DECISION**

Administrative Law Judge (ALJ) Dena Coggins, Office of Administrative Hearings (OAH), State of California, heard this matter on January 30, 2019, in Sacramento, California.<sup>1</sup>

Stephanie Alamo-Latif, Deputy Attorney General, represented complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair (BAR or Bureau), Department of Consumer Affairs (Department), State of California.

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<sup>1</sup> The hearing in this matter was consolidated with Case No. C2017-2330/OAH Case No. 2018060944, pursuant to an OAH order granting consolidation. A separate Proposed Decision was prepared for each matter.

William Ferreira, Attorney at Law, represented Gurpreet Singh (respondent), who appeared at the hearing.

Evidence was received, the record was closed, and the matter was submitted on January 30, 2019.

On February 26, 2019, ALJ Coggins issued a Proposed Decision in this matter. On May 9, 2019, the Director of the Department issued an Order of Rejection of Proposed Decision. On June 12, 2019, the Director issued an Order Fixing Date for Submission of Written Argument ordering the parties to submit written argument on or before July 29, 2019. Both parties timely submitted written argument. After review of the administrative record, including the transcript and written argument, the Director, pursuant to Government Code section 11517, hereby renders the final decision in this matter.

## FACTUAL FINDINGS

### *License History*

1. On or about January 7, 2010, the Bureau issued Automotive Repair Dealer (ARD) registration number ARD 260402 to respondent, doing business as Alpine Smog. On June 25, 2015, effective July 22, 2015, respondent's ARD registration was revoked via Stipulated Settlement and Disciplinary Order (2015 Settlement and Disciplinary Order).

2. On or about December 28, 2012, the Bureau issued Smog Check Station (RC) license number RC 260402 to respondent. On June 25, 2015, effective July 22, 2015, respondent's RC license was revoked via the 2015 Settlement and Disciplinary Order.

3. In 2006, the Bureau issued respondent Advanced Emission Specialist Technician (EA) license number EA 153759. The EA license expired in September 2012, and was cancelled in October 2012. The EA license was renewed pursuant to respondent's election as Smog Check Inspector (EO) license number EO 153759 and Smog Check Repair Technician (EI) license number EI 153759, effective October 2012.

On June 25, 2015, effective July 22, 2015, via the 2015 Settlement and Disciplinary Order, respondent's EO and EI licenses were revoked, with the revocations stayed, and placed on three years' probation on terms and conditions. An order terminating respondent's probation upon full and complete payment to the Bureau of any remaining balance of the cost recovery ordered pursuant to the 2015 Settlement and Disciplinary Order was issued on March 29, 2019.<sup>2</sup>

4. The Accusation and Petition to Revoke Probation alleges the Bureau issued Brake Adjuster (BA) license number BA 153759, Class C, and Lamp Adjuster (LA) license number LA

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<sup>2</sup> At the hearing, the Deputy Attorney General stated that because respondent's probation for his EO and EI licenses was terminated early, complainant would only be proceeding on the Accusation, not on the Petition to Revoke Probation in the matter presently before the Director (the 2018 Accusation and Petition to Revoke Probation). (RT 10:11-14.)

153759, Class A to respondent, with both licenses set to expire in September 2021. While the certification of license history for respondent submitted in evidence at the hearing does not establish that either license was issued to respondent, the Director finds that respondent was issued such licenses by the Bureau.<sup>3</sup>

*Prior Discipline / 2015 Settlement and Disciplinary Order*

5. On or about December 11, 2014, complainant, in his official capacity, signed and subsequently filed, an Accusation against respondent's Automotive Repair Dealer registration, Smog Check Station license, Smog Check Repair Technician license, and Smog Check Inspector license (2014 Accusation). The 2014 Accusation alleged six causes for discipline based upon conduct occurring during an undercover smog inspection and field inspection on September 19, 2013.

6. The 2014 Accusation alleged that respondent certified that his brother had performed the smog inspection on a Bureau undercover vehicle, when respondent actually used his brother's Smog Check Inspector license and confidential access code to access the Emissions Inspection System (EIS) and perform the smog inspection on the Bureau undercover vehicle; that he knew or should have known that he was not qualified or eligible to perform the smog inspection and that he would not have access to the EIS using his own name and license information; he failed to provide a copy of the signed estimate to the vehicle operator; and failed to perform emission control tests in accordance with procedures prescribed by the department.

7. The general facts underlying the 2014 Accusation were that in September 2013, respondent and his facility were the subject of an undercover operation, wherein a Bureau operator requested a smog inspection for an undercover vehicle that could not pass the visual portion of the smog inspection because the vehicle's exhaust recirculation valve and exhaust gas recirculation valve cooler had been removed. Respondent performed the smog inspection using his brother's login credentials, then informed the operator that the vehicle failed the inspection due to a missing exhaust gas recirculation valve and exhaust gas cooler. Later that day, the Bureau conducted a field inspection at respondent's facility and respondent admitted that he had used his brother's license number and access code to perform the smog inspection on the undercover vehicle. Respondent was not qualified or eligible to perform the smog inspection due to a low "STAR"<sup>5</sup> score.

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<sup>3</sup> The Director takes official notice of the Bureau's records in establishing that respondent holds Brake Adjuster license number BA 153759 and Lamp Adjuster license number LA 153759. (Bus. & Prof. Code, §§ 110, 9882; Gov. Code, § 11515; *Homan v. Board of Dental Examiners of California* (1927) 202 Cal. 593, 598; *Anderson v. Board of Dental Examiners of California* (1915) 27 Cal.App. 336, 339-340.) Further, pursuant to respondent's testimony and written arguments submitted by both parties, there is no disagreement as to whether respondent holds such licenses.

<sup>5</sup> STAR is a voluntary certification program that applies to registered automotive repair dealers that are also licensed smog check stations that meet all requirements in Article 10 of

8. The 2014 Accusation was resolved pursuant to the 2015 Settlement and Disciplinary Order wherein respondent admitted the truth of each and every charge and allegation in the 2014 Accusation. Consequently, respondent's Automotive Repair Dealer (ARD) registration and Smog Check Station (RC) license were revoked. Respondent's Smog Check Inspector (EO) and Smog Check Repair technician (EI) licenses were also revoked, with revocation stayed, placed on probation for three years with certain terms and conditions, and suspended for 15 days.

9. On or about July 28, 2017, respondent petitioned for a reduction of penalty seeking a reduction in the term of probation of his EO and EI licenses. His petition was granted on March 29, 2018, and his licenses were to be fully restored upon full and complete payment to the Bureau of any remaining balance of the cost recovery ordered pursuant to the Stipulated Settlement and Disciplinary Order.<sup>6</sup>

*2018 Accusation and Petition to Revoke Probation*

10. On March 16, 2018, complainant acting solely in his official capacity, signed and thereafter filed the instant Accusation and Petition to Revoke Probation (2018 Accusation and Petition to Revoke Probation). The Accusation was filed against respondent's Smog Check Inspector license (EO), Smog Check Repair Technician license (EI), Brake Adjuster license (BA) and Lamp Adjuster license (LA). The Petition to Revoke Probation was filed against the licenses on probation, Smog Check Inspector license (EO) and Smog Check Repair Technician license (EI).

11. Complainant contends that grounds exist to revoke respondent's EO and EI licenses based on the following:

- (1) failure to perform a visual and/or functional check of the emission control devices in accordance with required procedures, failing to perform tests of the emissions control devices and systems in accordance with legal requirements in that an unapproved aftermarket add-on device was installed on the undercover vehicle;
- (2) failure to inspect and test the subject vehicle in accordance with legal requirements, knowingly entering false information into the emission inspection system (EIS), and failing to conduct the required smog tests on the subject vehicle in accordance with the Bureau's specifications;

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Chapter 1 of Division 33 of Title 16 of the California Code of Regulations. (Cal. Code Regs., tit. 16, § 3340.1.) A STAR station is a smog station that meets higher performance standards established by the Bureau and is required to employ licensed technicians with performance measures that meet a specified threshold. (Cal. Code Regs., tit. 16, §§ 3392.3.1, 3340.1.)

<sup>6</sup> At the hearing, the Deputy Attorney General stated that because respondent's probation for his EO and EI licenses was terminated early, complainant would only be proceeding on the Accusation, not on the Petition to Revoke Probation in the matter presently before the Director (the 2018 Accusation and Petition to Revoke Probation). (RT 10:11-14.)

(3) commission of a dishonest, fraudulent, or deceitful act whereby another is injured by issuing an electronic smog Certificate of Compliance for the undercover vehicle without performing a bona fide inspection of the vehicle's emission control devices and systems depriving Californians of the protection afforded by the Motor Vehicle Inspection Program; and

(4) failure to obey all laws, a violation of Condition 8 of the terms of his probation.<sup>7</sup>

12. Complainant also contends that respondent's BA and LA licenses are subject to discipline in that he committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing an electronic smog Certificate of Compliance for the undercover vehicle without performing a bona fide inspection of the vehicle's emission control devices and systems depriving Californians of the protection afforded by the Motor Vehicle Inspection Program.

13. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, and independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

#### *California's Smog Check Program*

14. The Bureau implements the Motor Vehicle Inspection Program (commonly referred to as the Smog Check Program<sup>11</sup>), pursuant to which a licensed smog check technician at a licensed smog check station is required to visually inspect a vehicle's emission control components to ensure they are present, properly connected, and in good working condition. As part of its efforts to enforce provisions of the Smog Check Program, the Bureau conducts "undercover runs" in which an undercover operator brings a state-owned vehicle to a licensed smog check station for testing. The vehicle usually has a documented induced defect that will cause the vehicle to fail a properly performed smog test.

15. A vehicle must pass a properly conducted smog check inspection, which includes a proper visual inspection, in order for a Certificate of Compliance to be issued. If the technician locates an aftermarket device, the technician must determine whether the device is approved by the California Air Resources Board (CARB). Any missing, modified and unapproved, disconnected, and/or defective emissions controls constitute a visual inspection failure. The results of the inspection are printed on a Vehicle Inspection Report (VIR), which designates whether the vehicle passed or failed the smog inspection.

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<sup>7</sup> At the hearing, the Deputy Attorney General stated that because respondent's probation for his EO and EI licenses was terminated early, complainant would only be proceeding on the Accusation, not on the Petition to Revoke Probation in the matter presently before the Director (the 2018 Accusation and Petition to Revoke Probation). (RT 10:11-14.)

<sup>11</sup> See Cal. Code Regs., tit. 16, § 3340.1.

## *Undercover Operation*

### PREPARATION FOR UNDERCOVER OPERATION AT THE DOCUMENTATION LAB

16. The Bureau conducts undercover operations with the purpose of ensuring smog technicians and smog check stations perform smog inspections in accordance with the procedures prescribed by the Bureau. In conducting an undercover operation, staff at the Bureau's Sacramento Forensic Documentation Laboratory (Documentation Lab) prepare vehicles for subsequent undercover operations.

17. Richard Meyers, a Program Representative I at the Documentation Lab, testified at the hearing and submitted two declarations. Mr. Meyers maintains state fleet vehicles and prepares Bureau vehicles for undercover operations. On July 28, 2017, through August 22, 2017, Mr. Meyers prepared a 2002 Ford Mustang for the undercover smog inspection at issue here. The vehicle remained in Mr. Meyer's possession or was secured in the Documentation Lab at all times while the vehicle was in his custody.

18. Mr. Meyers road tested the vehicle to verify that the engine, transmission, chassis/suspension, and the brake operation performed correctly. He found the vehicle to perform normally and safely with no warning lights or abnormal conditions. The vehicle passed the smog inspection and he obtained the VIR. The vehicle was equipped with a K&N Cold Air Intake System (K&N). Mr. Myers verified the K&N was legal by using the Aftermarket Parts Label affixed near the part, which contains a CARB Executive Order number that can be used to verify approval.

Mr. Meyers photographed the vehicle's under-hood Emission Control Label and the Mass Air Flow Sensor that was properly installed on the engine. He photographed and then installed a DiabloSport Tuning System, a non-approved add-on device, to the vehicle's Mass Air Flow Sensor. Such a modification will cause the vehicle to fail the visual portion of a properly performed smog inspection. Mr. Meyers conceded that he was unsure of the setting he placed the device on, which affected the vehicle's emissions system. If the device was in the stock setting, Mr. Meyers agreed that the device could not have increased the vehicle's emissions. Mr. Meyers photographed the DiabloSport Tuning system that was mounted to the vehicle. He installed and photographed tamper indicators on the vehicle to detect the replacement, removal, or loosening of the DiabloSport Tuning System.

Next, Mr. Meyers road tested the vehicle to verify the engine, transmission, chassis/suspension, and the brake operation performed in a safe and correct manner. He performed another smog check inspection and determined the vehicle failed the visual inspection because the DiabloSport Tuning System, a non-approved add-on aftermarket device, was installed. He then obtained the VIR for the failed inspection, as the vehicle required the removal of the DiabloSport Tuning System before a Smog Check Certificate of Compliance could be properly issued. Mr. Meyers then secured the vehicle in the Documentation Lab.

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SEPTEMBER 14, 2017 SMOG INSPECTION OF 2002 FORD MUSTANG

19. On September 1, 2017, Mr. Meyers released custody of the 2002 Ford Mustang to Shawn Hunter, Program Representative I for the Bureau, at the Documentation Lab. Mr. Hunter secured the vehicle at the Bureau's secured storage facility. On September 14, 2017, Mr. Hunter retrieved the vehicle from the Bureau's secured storage facility. Mr. Hunter testified at hearing and submitted a declaration and investigative report.

20. Mr. Hunter reviewed the information packet prepared by Mr. Meyers and inspected the vehicle. He then visually verified the DiabloSport Tuning system was installed on the vehicle at that the under-hood emission label was present. Mr. Hunter released the vehicle to Ron Crawford, a Bureau undercover operator, at the secured storage facility. Mr. Hunter gave Mr. Crawford instructions to drive the vehicle to a prearranged location in Lodi, California. The two met at the prearranged location, and Mr. Hunter, again, inspected the vehicle to verify the DiabloSport Tuning system was installed and the under-hood emission label was present. Mr. Hunter photographed the introduced malfunction and the under-hood emission label, and then instructed Mr. Crawford to drive to Alpine Smog and Auto Sales, where respondent worked, located in Lodi, California, and request a smog inspection.

21. Mr. Crawford testified at hearing and submitted a declaration. He drove the 2002 Ford Mustang to Alpine Smog and Auto Sales, and he requested a smog inspection. Mr. Crawford used an assumed name, signed an estimate and the inspection was performed by respondent. Mr. Crawford paid \$50 for the inspection, then received an estimate, invoice and a VIR from the facility. The VIR indicated that the "Overall Test Result" was a "PASS." The VIR also stated, "Congratulations! Your vehicle passed the Smog Check inspection, which helps California reach its daily goal of removing smog-forming emissions from the air. ... Visual Inspection: PASS ..."

22. Following the inspection, Mr. Hunter and Mr. Crawford then met at the prearranged location, where Mr. Hunter inspected the vehicle to confirm the DiabloSport Tuning system was still installed and the under-hood emission label was still present. Mr. Crawford gave Mr. Hunter the invoice and the VIR. Mr. Crawford returned the vehicle to Mr. Hunter at the Bureau's secured storage facility, where Mr. Hunter secured the vehicle.

23. On October 17, 2017, Mr. Hunter released custody of the vehicle to Mr. Meyers, who secured the vehicle in the Documentation Lab. On October 18, 2017, Mr. Meyers re-inspected the vehicle and performed a smog inspection. The vehicle failed the visual portion of the smog inspection because the DiabloSport Tuning System was installed to the vehicle's Mass Air Flow Sensor. Mr. Meyers obtained a printout of the inspection and then photographed the installed DiabloSport Tuning System and the tamper indicators, which showed that the device had not been disturbed.

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### *Respondent's Testimony and Evidence*

24. Respondent testified at hearing. He has been a licensed smog technician since 2006 and he estimates he has performed smog inspections on approximately 10,000 cars. He is the station manager at Alpine Smog and Auto Sales.

25. Respondent testified about the circumstances underlying the 2014 Accusation. At the time, respondent and his brother were working at the smog shop where the undercover operation took place. Both respondent and his brother were licensed smog technicians. He admitted to using his brother's license to "smog" vehicles on the day of the undercover operation. Respondent fully acknowledged his misconduct and testified he learned his lesson. He complied with the terms of probation, including paying all fines and taking a training course. According to respondent, during probation, he was able to identify modifications to undercover vehicles while performing smog inspections of undercover vehicles. The Bureau did not contest his assertion.

26. As for the 2002 Ford Mustang at issue, respondent believed the DiabloSport Tuning System was in a stock or non-modified condition and that the device was merely acting as a monitor and not effecting emissions on the vehicle. He testified that if he saw an installed DiabloSport Tuning System in the future, he would fail the vehicle during the smog inspection. He also explained the steps he would take to avoid similar conduct in the future. Whether the vehicle failed or passed the smog inspection did not affect whether he would get paid for the inspection.

27. Respondent is currently married. He has one daughter and he is expecting another daughter. He is the primary source of income for his family. Respondent does not have stocks, bonds, or real estate. Respondent does not have a criminal record.

### *Discussion*

28. Respondent should not have issued a Certificate of Compliance for the Bureau's 2002 Ford Mustang. The vehicle should not have passed the visual inspection component of the smog inspection because an unapproved aftermarket performance device was installed on the vehicle at the time of inspection and was clearly visible. Respondent did not contest that he erroneously issued the Certificate of Compliance for the undercover 2002 Ford Mustang.

### *Costs of Enforcement*

29. Business and Professions Code section 125.3 provides, in pertinent part, that the Bureau may request the Administrative Law Judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.<sup>13</sup> Complainant submitted in evidence a certification of prosecution

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<sup>13</sup> Business and Professions Code section 125.3 references "any board." The term "board" includes "bureau." (Bus. & Prof. Code, § 22.)



and declaration of Deputy Attorney General Stephanie Alamo-Latif, which set forth the prosecution costs in the amount of \$7,292.50, through January 28, 2019. The certification provides an explanation of the work performed by the Attorney General's Office on this matter, the time spent on each task, the cost to complete the task, and the person who completed the task. A total of 45.25 hours was spent on the prosecution of this case. Based upon the complexity of the issues raised in the Accusation, 45.25 hours spent prosecuting this matter is unreasonable. Accordingly, the prosecution costs requested by complainant are not found to be reasonable. Based upon the complexity of this matter, no more than one-half of the prosecution costs (\$3,646.25) can be considered reasonable for purposes of Business and Professions Code section 125.3.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The burden of proof is on the Bureau. The licenses at issue in this case are nonprofessional licenses because they do not require extensive educational, training, or testing requirements similar to a professional license. (See *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.) Therefore, the standard of proof for the Bureau to prevail in this matter is a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917; Evid. Code, § 115.) “Preponderance of the evidence means evidence that has more convincing force than that opposed to it.” [citations omitted] ... 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.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325, emphasis in original.)

### *Relevant Statutes and Regulations*

2. Health and Safety Code, section 43000 states, in relevant part, that:
  - (a) The emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the state.
  - (b) The control and elimination of air pollutants is of prime importance for the protection and preservation of the public health and well-being, and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property.
  - (c) The state has a responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants.

[¶] ... [¶]

3. Protection of the public is the highest priority for the Bureau 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.)

4. The Department has the sole and exclusive authority in California for developing and implementing the motor vehicle inspection program. (Health & Saf. Code, § 44002.)

5. Qualified technicians must perform tests of emission control devices and systems in accordance with Health and Safety Code section 44012, which requires, among other things, that a visual or functional check be “performed in accordance with procedures prescribed by the department.” (Health & Saf. Code, §§ 44012, subd. (f), 44032; Cal. Code Regs., tit. 16, § 3340.30(a).)

6. Pursuant to California Code of Regulations, title 16, section 3340.42, subdivision (b), smog inspections must include, among other things, a “visual inspection of the emissions components and systems to verify the vehicle’s emission control systems are properly installed.”

7. Pursuant to California Code of Regulations, title 16, section 3340.35, subdivision (c), “a licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 [...] and has all the required emission control equipment and devices installed and functioning correctly.”

8. California Code of Regulations, title 16, section 3340.45 requires that all smog inspections be performed in accordance with the requirements and procedures set forth in the 2013 Smog Check Manual (Smog Check Manual), incorporated by reference.

9. Section 1.3.1 of the Smog Check Manual provides, in relevant part:

If a vehicle is equipped with parts that modify the original emission control configuration, inspectors must verify whether those parts are CARB approved<sup>[14]</sup> or exempted. If the installed parts are not CARB approved or exempted, and the original emissions control configuration has been modified, the corresponding emission controls are considered “Modified” and the vehicle shall fail the inspection.

10. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

No person shall enter into the BAR-97 Emissions Inspection System or the OBD Inspection System any vehicle identification information or emission control system identification data for any

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<sup>14</sup> Section 1.3.1 of the Smog Check Manual describes how to verify whether installed aftermarket parts are CARB approved.

vehicle other than the one being tested. Nor shall any person knowingly enter into the BAR-97 Emissions Inspection System or the OBD Inspection System any false information about the vehicle being tested.

11. Pursuant to Health and Safety Code section 44072.2, the Director may suspend, revoke, or take other disciplinary action against a license [...] if the licensee, or any partner, officer, or director does any of the following:

(a) Violates any section of [the Motor Vehicle Inspection Program] and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] ... [¶]

(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.

12. Business and Professions Code section 9889.3 states in relevant part:

The director may suspend, revoke, or take other disciplinary action against a license [...] if the licensee or any partner, officer, or director thereof:

[¶] ... [¶]

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

13. Health and Safety Code section 44072.8 states:

When a license has been revoked or suspended following a hearing [...], any additional license issued under [the Motor Vehicle Inspection Program] in the name of the licensee may be likewise revoked or suspended by the director.

14. Health and Safety Code section 44072.10, subdivision (c), states in relevant part:

The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

[¶] ... [¶]

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing [the Motor Vehicle Inspection Program].

15. Business and Professions Code section 9887.1 gives the director the authority to issue licenses for official lamp and brake adjusting stations and license lamp and brake adjusters. Business and Professions Code section 9889.9 states:

When any license has been revoked or suspended following a hearing [...], any additional license issued under Articles 5 and 6 [lamp/brake station licenses and/or station/adjuster licenses] of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

### *Discussion*

16. Cause exists to revoke respondent's smog technician license numbers EO 15379 and EI 15379 pursuant to Health and Safety Code section 44072.2, subdivision (a), for violations of Health and Safety Code sections 44012, subdivision (f), and 44032.

17. Cause exists to revoke respondent's smog technician license numbers EO 15379 and EI 15379 pursuant to Health and Safety Code section 44072.2, subdivision (c), for his failure to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a) and 3340.42.

18. Cause does not exist to discipline respondent's smog technician license numbers EO 15379 and EI 15379 pursuant to Health and Safety Code section 44072.2, subdivision (c), as it was not proven that respondent knowingly entered false information into the EIS.

19. Cause does not exist to discipline respondent's smog technician license numbers EO 15379 and EI 15379 pursuant to Health and Safety Code section 44072.2, subdivision (d), and Business and Professions Code section 9889.3, subdivision (d), because the evidence did not establish respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured.

20. Cause exists to revoke any additional license issued under the Motor Vehicle Inspection Program and Article 5 and 6 of the Automotive Repair Act [lamp/brake adjusting stations and lamp/brake adjuster licenses] in the name of respondent pursuant to Health and Safety Code section 44072.8 and Business and Professions Code section 9889.9.

21. Cause does not exist to revoke the probation of respondent's smog technician license numbers EO 15379 and EI 15379 and impose the stayed penalty of revocation because respondent is no longer on probation as it was terminated prior to this administrative hearing.

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### *Award of Costs*

22. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. As set forth in Factual Finding 24, the Bureau seeks reimbursement for the investigation and prosecution costs. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

23. Taking into account the above factors, the prosecution costs are not appropriate or reasonable. Additionally, respondent was successful at hearing on two alleged causes for discipline and raised a colorable challenge to the proposed discipline. Therefore, considering the complexity of this matter and the *Zuckerman* factors, enforcement costs in the amount of \$3,646.25, are reasonable, which respondent will be ordered to reimburse the Bureau.

### ORDER

1. Smog Check Repair Technician License Number EI 153759 and Smog Check Inspector License Number EO 153759 issued to respondent Gurpreet Singh are hereby revoked. However, the revocation is stayed and respondent is placed on probation for two years from the effective date of this Decision on the following terms and conditions:

#### **Condition No. 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.

#### **Condition No. 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.

#### **Condition No. 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 any Respondent or any partners, officers, or owners of any Respondent

facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

**Condition No. 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.

**Condition No. 5: Tolling of Probation**

If, during probation, Respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Respondent shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that Respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

**Condition No. 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.

**Condition No. 7: Maintain Valid License**

Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If Respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by Respondent within 30 days of that date. If Respondent's registration or license expires during a term

of probation, by operation of law or otherwise, then upon renewal Respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

**Condition No. 8: Cost Recovery**

Respondent Gurpreet Singh shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$3,646.25 pursuant to a payment plan approved 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. 79/17-15365. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

**Condition No. 9: 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 BAR.

**Condition No. 10: License Surrender**

Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate 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 BAR at any time before the date of the originally scheduled completion of probation. If Respondent applies to BAR for a registration or license at any time after that date, Respondent must meet all current requirements for registration or licensure and pay all

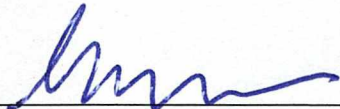
outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

**Condition No. 11: 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 the 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.

This Decision shall become effective on October 22, 2019.

IT IS SO ORDERED this 16 day of Sept., 2019.

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