

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

In the Matter of the Accusation Against:

GUSTAVO ANGEL HERNANDEZ, dba 15 MINUTE SMOG HARBOR

520 S. Harbor Blvd.

Fullerton, CA 92832

Automotive Repair Dealer Registration No. ARD 289172

Smog Check Test Only Station License No. TC 289172

GUSTAVO ANGEL HERNANDEZ

520 S. Harbor Blvd.

Fullerton, CA 92832

and

995 S. Sutter Creek Rd.

Anaheim, CA 92804

Smog Check Inspector License No. EO 150671

Smog Check Repair Technician License No. EI 150671

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JAMES F. MEEGAN, II

520 S. Harbor Blvd.

Fullerton, CA 92832

and

3538 West 108th Street

Inglewood, CA 90303

Smog Check Inspector License No. EO 634409

Respondents.

Case No. 79/22-10780

OAH No. 2023030168

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 February 2, 2024.

IT IS SO ORDERED this 20 day of December, 2023.



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

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STATE OF CALIFORNIA**

In the Matter of the Accusation against:

**GUSTAVO ANGEL HERNANDEZ dba 15 MINUTE SMOG
HARBOR;**

GUSTAVO ANGEL HERNANDEZ;

and

JAMES F. MEEGAN II, Respondents

Agency Case No. 79/22-10780

OAH No. 2023030168

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 18, 2023.

Stephen Aronis, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs, State of California.

Michael B. Levin, Attorney at Law, represented respondents Gustavo Angel Hernandez dba 15 Minute Smog Harbor, Gustavo Angel Hernandez, and James F. Meegan II.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 18, 2023.

FACTUAL FINDINGS

Background

1. On October 15, 2012, BAR issued Smog Check Inspector License No. EO 150671 and Smog Check Repair Technician License No. EI 150671 to Gustavo Angel Hernandez. The Smog Check Inspector License will expire on October 31, 2024, and the Smog Check Repair Technician License expired on October 31, 2022.
2. On December 19, 2017, BAR issued Automotive Repair Dealer (ARD) Registration No. ARD 289172 to respondent Gustavo Angel Hernandez, owner, dba 15 Minute Smog Harbor. The registration will expire on December 31, 2023.
3. On January 24, 2018, BAR issued Smog Check Station License No. TC 289172 to respondent Gustavo Angel Hernandez, owner, dba 15 Minute Smog Harbor. The license will expire on December 31, 2023.
4. On February 4, 2019, BAR issued STAR station certification to Gustavo Angel Hernandez, owner, dba 15 Minute Smog Harbor. The certification will remain active until the ARD Registration and/or Smog Check Station License is revoked, cancelled, the licenses become delinquent, or the certification is suspended.

5. On January 2, 2014, BAR issued a Smog Check Inspector License No. EO 634409 to James F. Meegan II. The license will expire on December 31, 2023, unless renewed.

6. On November 26, 2022, complainant filed an accusation against respondents alleging 11 causes for discipline stemming from allegations that respondents issued fraudulent smog certificates for eight different vehicles. The accusation further alleged that the prior citations issued against Gustavo Angel Hernandez dba Burbank Test Only Smog should be considered when determining the degree of discipline to be imposed against Mr. Hernandez. Complainant requested revocation of respondents' licenses and registration and recovery of investigation and prosecution costs.

7. Respondents timely filed notices of defense, and this hearing followed.

California's Smog Check Program

8. California's smog check program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. A smog check includes a visual inspection and a functional test. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected. The functional tests performed in this case used BAR's On-Board Diagnostic Inspection System (BAR-OIS). Use of the BAR-OIS test has been required on most model-year 2000 and newer vehicles since March 9, 2015.

9. The BAR-OIS consists of a Data Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is an On-Board Diagnostic-generation II (OBD-II) scan tool that retrieves diagnostic data from the vehicle's on-board computer system. The DAD connects to the vehicle's diagnostic link connector (DLC) to retrieve data

directly from the vehicle and transmit the data to BAR's central Vehicle Information Database (VID) through an internet connection.

10. The VID contains data for all smog check stations and technicians throughout the state, including all inspections and certificates of compliance. It receives passing results immediately after each successful inspection and it transmits an electronic certificate of compliance to the Department of Motor Vehicles (DMV). The VID keeps track of registration data, emissions control system data, smog check history, vehicle profiling data, station and technician data, and certificate data.

11. The data retrieved and recorded during a BAR-OIS smog check includes the electronic vehicle identification number (eVIN), the communication protocol, and the number of parameter identifications (PIDs). The eVIN is electronically programmed into the Powertrain Control Module (PCM) of newer vehicles and matches the Vehicle Identification Number (VIN) that is physically present on all vehicles. Most on-board systems on newer vehicles transmit the eVIN. The communication protocol is the specific language used by the vehicle. The communication protocol is programmed into each vehicle's on-board computer system and does not change. PIDs are data points reported by a vehicle's on-board computer system, such as engine speed, vehicle speed, and engine temperature. The PID count is the number of data points a vehicle's on-board system reports. The PIDs are programmed during manufacture, and the PID count for a specific vehicle does not change.

12. The BAR-OIS software makes the determination of whether the vehicle has passed the inspection based on the results of the OBD, visual and functional tests. Once a smog inspection is completed, the technician prints a Vehicle Inspection Report (VIR), which is the physical record of the test results that shows whether the

vehicle passed the inspection, and if so, the certificate of compliance number issued to the passing vehicle.

13. BAR has become aware of several methods used by smog check stations and smog check technicians to issue improper/fraudulent smog certificates of compliance. One method is known as "clean plugging." Clean plugging involves using another vehicle's properly functioning OBD system, or another resource, to generate passing diagnostic readings for the purpose of issuing fraudulent smog certificates of compliance to vehicles that are not in smog compliance and/or are not present for testing.

BAR's Investigation

14. Ian Evans recently retired from his position with BAR as a Program Representative II Specialist on December 31, 2022. Since that date, he has worked as a consultant for BAR. Mr. Evans testified about his investigation of respondents and his preparation of an investigative report, which was received in evidence.

15. Mr. Evans explained that the VID can be searched to obtain data for vehicles of the same make, model, and year to establish the expected PID and communication protocol for all such vehicles. These expected data values can be compared to the data values actually transmitted during a smog test to determine if clean plugging was used for the testing.

16. Mr. Evans conducted a review of the VID data for smog check inspections performed at 15 Minute Smog Harbor from January 21, 2020, to May 26, 2022. His review showed a pattern of vehicles being certified with communication protocols, and PID amounts that did not match the expected protocols or PID amounts for the vehicles being certified. If the data points do not match with the expected data points,

this is an indication of clean plugging. Mr. Evans's review confirmed that certificates of compliance were fraudulently issued for eight vehicles.

VEHICLE No. 1 – 2001 MERCEDES-BENZ E 320

17. On January 21, 2020, a 2001 Mercedes-Benz E 320 was tested at 15 Minute Smog Harbor, and smog certificate no. RE225332C was issued under Mr. Hernandez's Smog Check Inspector License. The BAR-OIS test data for this vehicle showed that the eVIN was not reported, the communication protocol was I914, and the PID count was 21. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the eVIN was not reported, the communication protocol was KWPF, and the PID count was 22 or 24.

Previously, on March 30, 2018, this 2001 Mercedes-Benz E 320 had passed a smog check performed by another station, at which time the eVIN was not reported, the communication protocol was KWPF, and the PID count was 22, all consistent with the expected test data.

This information confirmed that the actual expected data for the 2001 Mercedes-Benz E 320 matched the data transmitted in the 2018 smog check of this vehicle but did not match the data transmitted in 2020 by Mr. Hernandez, and that Mr. Hernandez issued the certificate of compliance fraudulently utilizing clean plugging for this vehicle.

VEHICLE No. 2 – 2001 DODGE GRAND CARAVAN SPORT

18. On September 20, 2020, a 2001 Dodge Grand Caravan Sport was tested at 15 Minute Smog Harbor, and smog certificate no. RQ425837C was issued under Mr. Hernandez's Smog Check Inspector License. The BAR-OIS test data for the 2001 Dodge

Grand Caravan Sport shows that the eVIN was not reported, the communication protocol was I914, and the PID count was 15/3. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3.

Previously, on July 23, 2020, this 2001 Dodge Grand Caravan Sport failed a smog check inspection performed by another station because the vehicle's on-board computer system had not completed the emission system's self-checks. At the time of the inspection the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3, all consistent with the expected test data.

This information confirmed that the actual expected data for the 2001 Dodge Grand Caravan Sport matched the data transmitted in the prior smog check of this vehicle but did not match the data transmitted by Mr. Hernandez, and that Mr. Hernandez issued the certificate of compliance fraudulently utilizing clean plugging for this vehicle.

VEHICLE NO. 3 – 2002 DODGE CARAVAN SE

19. On October 21, 2020, a 2002 Dodge Caravan SE was tested at 15 Minute Smog Harbor, and smog certificate no. RS343678C was issued under Mr. Meegan's Smog Check Inspector License. The BAR-OIS test data for the 2002 Dodge Caravan SE shows that the eVIN was not reported, the communication protocol was I914, and the PID count was 15/3. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3.

Previously, on May 22, 2019, this 2002 Dodge Caravan SE passed a smog check performed by another station, at which time the eVIN was not reported, the

communication protocol was JVPW, and the PID count was 17/3, all consistent with the expected test data.

This information confirmed that the actual expected data for the 2002 Dodge Caravan SE matched the data transmitted in the 2019 smog check of this vehicle but did not match the 2020 data transmitted by Mr. Meegan, and that Mr. Meegan issued the certificate of compliance fraudulently utilizing clean plugging for this vehicle.

VEHICLE NO. 4 – 2001 CHRYSLER TOWN & COUNTRY LIMITED

20. On February 6, 2021, a 2001 Chrysler Town & Country Limited was tested at 15 Minute Smog Harbor, and smog certificate no. RW560497C was issued under Mr. Hernandez's Smog Check Inspector License. The BAR-OIS test data for the 2001 Chrysler Town & Country Limited shows that the eVIN was not reported, the communication protocol was I914, and the PID count was 15/3. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3.

On January 4, 2021, only one month earlier, this 2001 Chrysler Town & Country Limited failed a smog check inspection performed at 15 Minute Smog Harbor by Mr. Meegan because the vehicle's on-board computer system had not completed the emission system's self-checks. At the time of the inspection, the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3, all consistent with the expected test data.

This information confirmed that the actual expected data for the 2001 Chrysler Town & Country Limited matched the data transmitted in the prior smog check of this vehicle but did not match the data transmitted by Mr. Hernandez, and that Mr.

Hernandez issued the certificate of compliance fraudulently utilizing clean plugging for this vehicle.

VEHICLE No. 5 – 2001 CHRYSLER TOWN & COUNTRY LIMITED

21. On April 22, 2021, a 2001 Chrysler Town & Country Limited was tested at 15 Minute Smog Harbor, and smog certificate no. SA412964C was issued under Mr. Meegan's Smog Check Inspector License. The BAR-OIS test data for the 2001 Chrysler Town & Country Limited shows that the eVIN was not reported, the communication protocol was I914, and the PID count was 15/3. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3.

Previously, on January 24, 2019, this 2001 Chrysler Town & Country Limited passed a smog check performed by another station, at which time the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3, all consistent with the expected test data.

This information confirmed that the actual expected data for the 2001 Chrysler Town & Country Limited matched the data transmitted in the 2019 smog check of this vehicle but did not match the data transmitted by Mr. Meegan, and that Mr. Meegan issued the certificate of compliance fraudulently utilizing clean plugging for this vehicle.

VEHICLE No. 6 – 2001 CHRYSLER TOWN & COUNTRY LIMITED

22. On June 3, 2021, a 2001 Chrysler Town & Country Limited was tested at 15 Minute Smog Harbor, and smog certificate no. IL536870C was issued under Mr. Hernandez's Smog Check Inspector License. The BAR-OIS test data for the 2001

Chrysler Town & Country Limited shows that the eVIN was not reported, the communication protocol was I914, and the PID count was 15/3. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3.

Previously, on May 22, 2019, this 2001 Chrysler Town & Country Limited passed a smog check performed by another station, at which time the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3, all consistent with the expected test data.

This information confirmed that the actual expected data for the 2001 Chrysler Town & Country Limited matched the data transmitted in the 2019 smog check of this vehicle but did not match the data transmitted by Mr. Hernandez, and that Mr. Hernandez issued the certificate of compliance fraudulently utilizing clean plugging.

VEHICLE NO. 7 – 2001 DODGE GRAND CARAVAN SPORT

23. On January 26, 2022, a 2001 Dodge Grand Caravan Sport was tested at 15 Minute Smog Harbor, and smog certificate no. IN892311C was issued under Mr. Hernandez's Smog Check Inspector License. The BAR-OIS test data for the 2001 Dodge Grand Caravan Sport shows that the eVIN was not reported, the communication protocol was I914, and the PID count was 15/3. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3.

Previously, on November 15, 2018, this 2001 Dodge Grand Caravan Sport passed a smog check performed by another station, at which time the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3, all consistent with the expected test data.

This information confirmed that the actual expected data for the 2001 Dodge Grand Caravan Sport matched the data transmitted in the 2018 smog check of this vehicle but did not match the data transmitted by Mr. Hernandez, and that Mr. Hernandez issued the certificate of compliance fraudulently utilizing clean plugging.

VEHICLE NO. 8 – 2001 CHRYSLER TOWN & COUNTRY LX

24. On May 26, 2022, a 2001 Chrysler Town & Country LX was tested at 15 Minute Smog Harbor, and smog certificate no. SQ949739C was issued under Mr. Hernandez's Smog Check Inspector License. The BAR-OIS test data for the 2001 Chrysler Town & Country LX shows that the eVIN was not reported, the communication protocol was I914, and the PID count was 15/3. Comparative BAR-OIS test data for the same year, make, and model of vehicle showed that the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3.

Previously, on May 12, 2020, this 2001 Chrysler Town & Country LX passed a smog check performed by another station, at which time the eVIN was not reported, the communication protocol was JVPW, and the PID count was 17/3, all consistent with the expected test data.

This information confirmed that the actual expected data for the 2001 Chrysler Town & Country LX matched the data transmitted in the 2020 smog check of this vehicle but did not match the data transmitted by Mr. Hernandez, and that Mr. Hernandez issued the certificate of compliance fraudulently utilizing clean plugging.

Citation History

25. The BAR previously issued three citations against Gustavo Angel Hernandez dba Burbank Test Only Smog (Burbank Smog). A citation, effective

November 6, 2016, was issued because Burbank Smog issued a certificate of compliance to a vehicle using the wrong inspection test. Citations, effective October 8, 2018, and September 21, 2019, were issued because Burbank Smog issued certificates of compliance to undercover vehicles that were documented to fail a properly performed smog check inspection.

Mr. Hernandez's Testimony

26. Mr. Hernandez owned and operated Burbank Smog from 2007 to 2012. In 2012 he stopped operating Burbank Smog and left a smog check technician in charge of running the day-to-day operations through 2019. The technician "did not inspect vehicles correctly" and as owner, Mr. Hernandez was responsible for the violations and received three citations, in 2016, 2018, and 2019. The technician accepted responsibility and after the third violation, he quit.

After leaving Burbank Smog in 2012, Mr. Hernandez began working as a smog check technician at Ace Smog of Anaheim (Ace Smog). In 2018, he opened 15 Minute Smog Harbor, but he continued to work at Ace Smog until they went out of business in 2020. In 2021, he began working as a smog check inspector at AA Smog in Compton, where his hours are currently 9:00 a.m. to 5:00 p.m., Monday through Friday.

Mr. Hernandez's only employee at 15 Minute Smog Harbor is Mr. Meegan. 15 Minute Smog Harbor is open seven days per week. Mr. Meegan works Monday through Friday, 7:00 a.m. to 6:00 p.m. and Mr. Hernandez works from 6:00 p.m. to 8:00 p.m. Mr. Hernandez also works Saturday and Sunday, 9:00 a.m. to 6:00 p.m. During the period January 2020 to May 2022, and to date, Mr. Hernandez conducted an average of 90 smog check inspections per week. Between the two shops, he works seven days per week, 12 hours per day.

Mr. Hernandez has encountered problems using the OBD-II equipment and software, because a vehicle's computer can be replaced or reprogrammed, resulting in unreliable testing output. He has had instances when after he connected the cable to the DLC, the vehicle would stop and would not start again. This usually happened with Chryslers and Dodges as these vehicles tend to have a lot of electrical problems. This problem "is common knowledge" although he has never reported it to the BAR because he feels he would be "creating suspicion." Mr. Hernandez did not provide any correlation between his statements regarding replaced or reprogrammed vehicle computers and the six vehicles he has been accused of clean plugging. He stated that because the accusation was filed, he wanted to make the department aware of this issue.

Mr. Hernandez has no recollection of inspecting the six subject vehicles but said, "If the records show that it was my license, then I did it." He did not intentionally clean plug these vehicles. When asked how he could assure BAR that this would not happen in the future, he said he would want to make sure he had gathered more data so he could show that this is not necessarily his fault but it is the result of replacing or reprogramming computers, and this is something over which he has no control. He then added that he can follow the BAR procedures "step by step."

Mr. Meegan's Testimony

27. Mr. Meegan has worked at 15 Minute Smog Harbor for four and one-half years. He previously worked at a station owned by Ace Smog. During the period January 2020 to May 2022, he completed approximately nine smog inspections per day. He has never received a citation or had a complaint filed against him.

He reviewed the VIRs involved but he did not recall the inspections on the two vehicles he is alleged to have clean plugged. He did not intentionally clean plug these vehicles. He has never clean plugged a vehicle. He did not know that clean plugging existed "until I received the paperwork."

Mr. Meegan said that he has had problems with the smog inspection system, which, "shows that there are glitches in the software even if you are trying to follow the rules." For example, vehicle computers could be swapped, which changes the data output. Mr. Meegan provided no evidence that these "glitches" were present in the two vehicles he inspected, or that this resulted in inaccurate tests results. Mr. Meegan said he wants to point out that a glitch "may have caused (BAR) to say that I was doing something illegal." He said that he did not issue the certificates but "the BAR issued the certificates."

When asked how he could assure BAR that the clean plugging issues will not occur again, he said that going forward, when a vehicle comes into 15 Minute Smog Harbor, he will do a thorough inspection and look for anything that is not original equipment manufacture (OEM). He said, "All I can do is to watch for something suspicious."

Character References

28. Mr. Hernandez provided several letters from supervisors, long-time customers and acquaintances who described his honesty, his willingness to help customers, his knowledge of computer programming, and his ability to identify vehicle and computer problems. Mr. Hernandez stated that all authors were aware of the allegations.

29. Mr. Meegan provided several letters from friends, clients and acquaintances, who described him as an excellent mechanic and honest person. One author stated that he did not believe Mr. Meegan would do something that would jeopardize his job that supports his family; another author stated he does not believe Mr. Meegan would falsify a smog test because he values his certification. Mr. Meegan represented that all authors were aware of the allegations in this matter.

Cost Recovery

30. Complainant sought recovery of costs of investigation and prosecution in this matter.

31. BAR produced two declarations regarding investigative costs. The first declaration was signed by Mark Casillas, Program Representative III, supervisor, dated July 28, 2022, and included a two-page attachment listing the dates for hours of service, the hours spent on each date, and the activity performed for each date at a rate of \$107.14 per hour, for a total of \$803.55. The second declaration was signed by Ian Evans, Program Representative II Specialist, dated July 28, 2022, and included a one-page attachment listing the dates for hours of service, the hours spent on each date, and the activity performed for each date at a rate of \$89.37 per hour, for a total of \$714.96. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(1), and the \$1,518.51 total investigative costs requested were reasonable.

32. The Deputy Attorney General who tried this matter submitted a declaration requesting prosecution costs of \$8,117.50 through October 11, 2023. Attached to the declaration was a document entitled "Master 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. The declaration and the attachment seeking prosecution costs of \$8,117.50 complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), and those costs were reasonable.

33. The total reasonable costs of investigation and prosecution in this matter are \$9,636.01.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard of proof applies. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) Although an applicant for smog check inspector and repair technician licenses must complete certain coursework (Cal. Code Regs., tit. 16, § 3340.28, subd. (b)(3)) and pass an examination (Cal. Code Regs., tit. 16, § 3340.29), such requirements are not similar to the extensive educational, training and testing requirements necessary to obtain a professional license. Smog check inspection licenses and an automotive repair dealer registration are nonprofessional or occupational licenses, and proceedings to revoke such licenses are governed by the preponderance of evidence standard of proof. (*Imports Performance, supra*, at pp. 916-917.)

Applicable Code Sections

2. 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. . . .

3. Health and Safety Code section 44012 requires that a smog vehicle inspection be performed in accordance with BAR's regulations.

4. Health and Safety Code section 44015, subdivision (b), provides that "if a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

5. Health and Safety Code section 44072.2 provides, 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:

(a) Violates any section of this chapter 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. . . .

6. Health and Safety Codes section 44072.10, subdivision (c), provides in 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:

(1) Clean piping, as defined by the department. . . .

[¶] . . . [¶]

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

Applicable Regulations

7. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides:

The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

8. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides that a smog check inspector or repair technician must inspect and test vehicles in accordance with Health and Safety Code sections 44012 and 44035.

9. California Code of Regulations, title 16, section 3340.35, subdivision (c), requires a smog station to issue a certificate of compliance or non-compliance when a

vehicle has been inspected according to California Code of Regulations, title 16, section 3340.42, and has all of the required emission control equipment and devices installed and functioning correctly.

10. California Code of Regulations, title 16, section 3340.41, subdivision (c)2, provides:

No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information about the vehicle being tested.

11. California Code of Regulations, title 16, section 3340.42 states in part:

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

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

[1] . . . [1]

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

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

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

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

Case Law Regarding Fraud

12. "There is no absolute or fixed rule for determining what facts will constitute fraud; whether or not 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.)

In an appeal from 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.App2d 427, 437-438.)

Disciplinary Guidelines

13. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, BAR must consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev. March 2016].

The guidelines state that factors in aggravation include a history of citations and/or formal disciplinary action; the failure to comply with BAR's request for corrective action; and conduct which constitutes fraud or gross negligence. Factors in mitigation include: evidence that a licensed station has initiated steps to minimize recurrence; evidence of resolution of consumer complaints with a subsequent change in business practices; and evidence of implementing internal controls or audits designed to eliminate errors.

14. The guidelines contain recommendations for the minimum and maximum discipline for the following violations:

For violation of Business and Professions Code section 9884.7, subdivision (a)(4), or Health and Safety Code section 44072.2, subdivision (d), the recommended discipline ranges from revocation to revocation stayed with a period of five years' probation.

For violation of Business and Professions Code section 9884.7, subdivision (a)(1), the recommended discipline ranges from revocation to revocation stayed with a period of three years' probation.

For a violation of Health and Safety Code section 44072.2, subdivisions (a) and (c), the recommended discipline ranges from revocation to revocation stayed with a period of two years' probation.

Evaluation

15. California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. The state and the public rely upon smog check stations and technicians to honestly and properly conduct smog tests and repairs to ensure that vehicle emissions are reduced and air quality is improved. Additionally, consumers rely upon automotive repair dealers and their employees to act with honesty and integrity when diagnosing and making automotive repairs. Because the consuming public entrusts their vehicles to automotive repair dealers for repair, consumers are vulnerable to harm when automotive repair dealers and their employees are dishonest.

16. A preponderance of the evidence demonstrated that for the eight subject smog inspections performed by Mr. Hernandez and Mr. Meegan on behalf of 15 Minute Smog Harbor, there were significant differences between the BAR-OIS data reported to BAR and the inspection results obtained from samplings of the same make, model and year vehicle being tested, and between the BAR-OIS data reported to the BAR in prior or subsequent inspections of the same vehicles. This evidence established that six fraudulent inspections were conducted by Mr. Hernandez and two fraudulent inspections were conducted by Mr. Meegan. The results in the prior or subsequent inspections were consistent with the expected results, further demonstrating that fraudulent inspections occurred.

17. A preponderance of the evidence demonstrated that all respondents violated the laws and regulations concerning the operation of the smog inspection program by clean plugging vehicles and issuing certificates that falsely certified the vehicles had passed a properly conducted smog inspection.

18. Mr. Hernandez spoke generally of "unreliable testing output" and Mr. Meegan referenced "glitches" in the system, but neither respondent provided evidence of a connection with these issues to the subject smog inspection. Mr. Hernandez said problems with the OBD-II equipment and software OBD-system were common knowledge but he had never reported these issues to BAR. According to Mr. Meegan, a glitch "may have caused" the accusation of clean plugging. The only credible explanation for these events is that Mr. Hernandez and Mr. Meegan committed dishonest and fraudulent inspections of the eight subject vehicles using the clean plugging method.

19. Citations were previously issued by BAR to Mr. Hernandez. He left the operation of Burbank Smog in the hands of a smog check inspector employee for seven years, from 2012 to 2019. As owner, Mr. Hernandez was issued three citations, in 2016, 2018, and 2019. Mr. Hernandez did not fire the employee but rather the employee quit after the third citation was issued. In 2018, while one employee was operating his Burbank Smog shop, Mr. Hernandez opened a second facility, 15 Minute Smog Harbor, and he left Mr. Meegan in charge of the operations from 2018 to the present. Mr. Hernandez is aware that he is fully responsible for the conduct of his employees.

Mr. Hernandez saw nothing wrong with the fact that he did not oversee the work of his employees at Burbank Smog from 2012 to 2018, or 15 Minute Smog Harbor from 2018 to date. The only issue he saw was that he trusted his employee at

Burbank Smog and the employee did not perform inspections properly, yet he never fired the employee.

20. Mr. Hernandez did not accept responsibility for his fraudulent inspections or express any remorse. To assure the BAR that fraudulent inspections will not occur in the future, Mr. Hernandez said that he could follow BAR procedures "step by step." As owner of 15 Minute Smog Harbor, he provided no evidence that he would implement internal controls or audits designed to eliminate errors. Instead, he said he would collect data so he can show that whatever occurred is not necessarily his fault.

21. Upon consideration of the totality of the evidence presented, as well as the disciplinary guidelines, the public can only be properly protected by the revocation of Mr. Hernandez's ARD registration and smog check only station license in the name of 15 Minute Smog Harbor, and his smog check inspector license. As a result, the STAR designation is also revoked.

22. Mr. Meegan has no prior history of discipline and only two of the eight fraudulent smog inspections was attributed to him, which provided no evidence of a pattern or practice. It was concerning that Mr. Meegan did not accept responsibility for issuing the fraudulent certificates but stated that BAR issued the certificates. Going forward he will conduct a thorough inspection of each vehicle, look for anything that is not original equipment manufacture, and watch for anything "suspicious."

Accordingly, an evaluation of the evidence and considering the disciplinary guidelines, an appropriate level of discipline would be placing his license on probation for a period of five years with appropriate terms as dictated by the disciplinary guidelines.

Cause Exists to Discipline the Licensees

FIRST CAUSE FOR DISCIPLINE

23. Cause exists to discipline Mr. Hernandez's automotive repair dealer registration under Health and Safety Code section 9884.7, subdivision (a)(1), because Mr. Hernandez and Mr. Meegan, on behalf of respondent 15 Minute Smog Harbor, made statements that they knew were untrue or misleading when they certified that the eight subject vehicles passed smog inspection when in fact they utilized the clean plugging method to issue fraudulent certificates of compliance for the subject vehicles.

SECOND CAUSE FOR DISCIPLINE

24. Cause exists to discipline Mr. Hernandez's automotive repair dealer registration under Health and Safety Code section 9884.7, subdivision (a)(4), because Mr. Hernandez and Mr. Meegan, on behalf of respondent 15 Minute Smog Harbor, committed fraud when they certified that the eight subject vehicles passed smog inspection when in fact they utilized the clean plugging method to issue fraudulent certificates of compliance for the subject vehicles.

THIRD CAUSE FOR DISCIPLINE

25. Cause exists to discipline Mr. Hernandez's smog check station license under Health and Safety Code section 44072.2, subdivision (a), because respondent 15 Minute Smog Harbor failed to comply with the following sections of the Health and Safety Code: section 44012, for failing to ensure that the emission control tests for the subject vehicles were performed in compliance with procedures prescribed by the BAR; and section 44015, for issuing certificates of compliance for the subject vehicles

without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with section 44012.

FOURTH CAUSE FOR DISCIPLINE

26. Cause exists to discipline respondent 15 Minute Smog Harbor's smog check station license under Health and Safety Code section 44072.2, subdivision (c), because respondent 15 Minute Smog Harbor failed to comply with provisions of the California Code of Regulations, Title 16, as follows: section 3340.35, subdivision (c), when respondent 15 Minute Smog Harbor failed to inspect and test the subject vehicles in accordance with the procedures specified in section 3340.42 of the regulations; and section 3340.42 when respondent 15 Minute Smog Harbor failed to conduct the required smog tests and inspections on those vehicles in accordance with the BAR specifications.

FIFTH CAUSE FOR DISCIPLINE

27. Cause exists to discipline respondent 15 Minute Smog Harbor's smog check station license under Health and Safety Code section 44072.2, subdivision (d), and 44072.10, subdivision (c), because Mr. Hernandez and Mr. Meegan, on behalf of respondent 15 Minute Smog Harbor, committed dishonest, fraudulent or deceitful acts whereby another was injured by issuing certificates of compliance for the subject vehicles without performing bona fide inspections of those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

28. Cause exists to discipline Mr. Hernandez's smog check inspector license under Health and Safety Code section 44072.2, subdivision (a), because Mr. Hernandez failed to comply with Health and Safety Code section 44012 by failing to perform the emission control tests on those vehicles in accordance with procedures prescribed by the BAR.

SEVENTH CAUSE FOR DISCIPLINE

29. Cause exists to discipline Mr. Hernandez's smog check inspector and smog check technician license under Health and Safety Code section 44072.2, subdivision (c), because Mr. Hernandez failed to comply with provisions of California Code of Regulations, title 16, as follows: section 3340.30, subdivision (a), when he failed to inspect and test the subject vehicles in accordance with Health and Safety Code section 44012; section 3340.41, subdivision (c), when he entered false information into the EIS; and section 3340.42 when he failed to conduct the required smog tests and inspections on those vehicles in accordance with the BAR's specifications.

EIGHTH CAUSE FOR DISCIPLINE

30. Cause exists to discipline Mr. Hernandez's smog check inspector and smog check repair technician licenses under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), because Mr. Hernandez committed dishonest, fraudulent or deceitful acts whereby another was injured by issuing certificates of compliance for five subject vehicles without performing bona fide inspections on those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

NINTH CAUSE FOR DISCIPLINE

31. Cause exists to discipline Mr. Meegan's smog check inspector license under Health and Safety Code section 44072.2, subdivision (a), because regarding the subject vehicles Mr. Meegan failed to comply with section 44012 in a material respect when he failed to perform the emission control tests on those vehicles in accordance with procedures prescribed by the BAR.

TENTH CAUSE FOR DISCIPLINE

32. Cause exists to discipline Mr. Meegan's smog check inspector license under Health and Safety Code section 44072.2, subdivision (c), because Mr. Meegan failed to comply with provisions of the California Code of Regulations, title 16, as follows: section 3340.30, subdivision (a), when he failed to inspect and test the subject vehicles in accordance with Health and Safety Code section 44012; section 3340.41, subdivision (c), when he entered false information into the EIS; and section 3340.42, when he failed to conduct the required smog tests and inspections on those vehicles in accordance with the BAR's specifications.

ELEVENTH CAUSE FOR DISCIPLINE

33. A preponderance of the evidence demonstrated that Mr. Meegan's smog check inspector license is subject to discipline under Health and Safety Code section 44072.2, subdivision (d), regarding the subject vehicles because Mr. Meegan committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Costs of Investigation and Prosecution

34. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct. The scope of the investigation was appropriate to the allegations. The charges were sustained, and no evidence was presented regarding respondents' ability to pay costs.

35. After consideration of the factors under *Zuckerman*, it is determined that all respondents in this matter must pay a total of \$9,636.01 for costs of investigation and enforcement in this matter. However, it is noted that of the eight vehicles at issue in this matter, Mr. Meegan was only responsible for two vehicles and Mr. Hernandez was responsible for six vehicles. Accordingly, Mr. Meegan will only be responsible for 33 percent of the total costs in the amount of \$3,179.88, and Mr. Hernandez will be responsible for the remaining \$6,456.13.

ORDER

1. Automotive Repair Dealer Registration No. ARD 289172 issued to Gustavo Angel Hernandez, owner, dba 15 Minute Smog Harbor is revoked.

2. Smog Check, Test only Station License No. TC 289172 issued to Gustavo Angel Hernandez, owner, dba 15 Minute Smog Harbor is revoked.

3. STAR station certification issued to Gustavo Angel Hernandez, owner, dba 15 Minute Smog Harbor is revoked.

4. Smog Check Inspector License No. EO 150671 issued to Gustavo Angel Hernandez is revoked.

5. Mr. Hernandez shall pay complainant's costs of investigation and enforcement of \$6,456.13, which may be paid on such terms as may be determined by the Bureau of Automotive Repair.

6. Smog Check Inspector License No. EO 634409 issued to James F. Meegan II is revoked, the order of revocation is stayed, and Mr. Meegan is placed on probation for a period of five (5) years on the following conditions:

1. Obey All Laws

During the period of probation, Mr. Meegan shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Mr. Meegan.

2. Quarterly Reporting

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

3. Report Financial Interests

Mr. Meegan 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.

4. Access to Examine Vehicles and Records

Mr. Meegan 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. Mr. Meegan shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

5. Tolling of Probation

If, during probation, Mr. Meegan leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Mr. Meegan 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 Mr. Meegan obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Mr. Meegan 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 Mr. Meegan 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.

6. Violation of Probation

If Mr. Meegan 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 Mr. Meegan is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. Maintain Valid License

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

8. Cost Recovery

Mr. Meegan shall pay the Bureau of Automotive Repair \$3,179.88 for the reasonable costs of the investigation and enforcement of case no. 79/22-10780. Mr. Meegan shall make such payment as follows: A payment plan or terms to be determined by the BAR. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Mr. Meegan 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. 79/22-10780. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of Probation

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

10. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if Mr. Meegan ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, Mr. Meegan may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under

the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision. Mr. Meegan 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 Mr. Meegan applies to BAR for a registration or license at any time after that date, he must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

11. Notification to Employer

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

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12. Restriction on Inspecting Vehicles Requiring Smog Check Certification at a STAR Station

Mr. Meegan shall not be permitted to issue certificates of compliance for any vehicles requiring Smog Check certification at a STAR station for their biennial Smog Check pursuant to Section 44010.5 or 44014.7 under the Health and Safety Code.

DATE: November 15, 2023

Marion Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings