

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

In the Matter of the Accusation Against:

THONG CONG TRUONG,

d.b.a. MT SMOG CHECK-STAR STATION,

Automotive Repair Dealer No. ARD 271677

Smog Check Station License No. TC 271677

Smog Check Inspector License No. EO 634361

and

ROBERT THANH PHAM,

Smog Check Inspector License No. EO 633121

Smog Check Repair Technician No. EI 633121

and

CHINH NGUYEN,

Smog Check Inspector License No. EO 636469

Respondents.

Agency Case No. 79/23-3580

OAH No. 2024060442

PROPOSED DECISION

Administrative Law Judge Stephanie E. Haffner, State of California, Office of Administrative Hearings, heard this matter on August 19 and 20, 2025, by videoconference.

Deputy Attorney General Justin R. Surber represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Attorney William D. Ferreira represented respondents Thong Cong Truong and Robert Thanh Pham, who were not present.

There was no appearance by or on behalf of respondent Chinh Nguyen. The hearing proceeded as a default against respondent Nguyen pursuant to Government Code section 11520.

The matter was submitted for decision on August 20, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 7, 2013, the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), issued Automotive Repair Dealer (ARD) Registration number ARD 271677 to respondent Thong Cong Truong (Truong), doing business as MT Smog Check-Star Station. On February 20, 2013, the Bureau issued Smog Check, Test-Only Station license number TC 271677 to Truong. The registration and license were both in full force and effect at all relevant times and are scheduled to expire on February 28, 2026.

2. On June 13, 2012, the Bureau issued Advanced Emission Specialist Technician license number 634361 to Truong. Pursuant to a license restructure by the Bureau, this license was cancelled on July 14, 2014, and renewed pursuant to Truong's election as Smog Check Inspector (EO) license number EO 634361. This license was in full force and effect at all relevant times and is scheduled to expire on July 31, 2026.

3. On May 16, 2011, the Bureau issued Advanced Emission Specialist Technician license number 633121 to respondent Robert Thanh Pham (Pham). Pursuant to a license restructure by the Bureau, this license was cancelled on July 5, 2013, and renewed pursuant to Pham's election, effective July 5, 2013, as Smog Check Inspector (EO) license number EO 633121 and Smog Check Repair Technician (EI) license number EI 633121. Both licenses were in full force and effect at all relevant times, except that the Smog Check Repair Technician (EI) license expired on September 30, 2023, and was not renewed. The Smog Check Inspector (EO) license is scheduled to expire on September 30, 2025.

4. On January 21, 2014, the Bureau issued Smog Check Inspector (EO) license number EO 636469 to respondent Chinh Nguyen (Nguyen). This license was in full force and effect at all relevant times and is scheduled to expire on January 31, 2026.

5. On October 31, 2023, complainant Patrick Dorais issued the accusation, solely in his official capacity as Chief of the Bureau. Complainant seeks to discipline Truong's ARD registration and each of respondents' licenses based on allegations of fraudulent smog check certifications and violations of other statutes and regulations. Respondents timely filed notices of defense, and this proceeding followed.

Smog Check Inspections and the Practice of Clean Plugging

6. The control and elimination of air pollutants from motor vehicles "is of prime importance for the protection and preservation of the public health and well-being." (Health & Saf. Code, § 43000, subd. (b).) The purpose of the smog check program is to limit the extent to which vehicles driven in California contribute to air pollution, and to establish uniform procedures for compliance with standards that control or eliminate air pollutants from motor vehicles. (See generally *id.*, § 43000.)

7. There are two primary types of smog check stations. A test-only station may only perform smog check tests and may not perform repairs. A test and repair station may conduct smog check tests and perform repairs.

8. Smog check inspections must be performed at licensed smog check stations by a qualified smog check technician, who may be either a licensed smog check repair technician, licensed smog check inspector, or both. The technician must be registered to the specific station and may not test outside of their assigned station.

If a technician is not registered to the station where a test is being performed, the Bureau's test system will not allow the inspection to proceed.

9. Beginning in March 2015, smog check inspections of most vehicles in California are performed pursuant to the Bureau's On-Board Diagnostics (OBD) Information System (OIS) protocol. The main parts of the OIS inspection are: (1) identify the technician; (2) identify the vehicle; (3) conduct a functional inspection; and (4) conduct a visual inspection. The OIS inspection requires a certified Data Acquisition Device, computer with live internet connection, bar code scanner, and printer.

10. To initiate an OIS inspection, a technician must first use the bar code scanner that connects with the OIS analyzer to enter their license number, which is printed on their license badge. They must then enter an access code which is assigned by the Bureau and is unique to the technician. Technicians must not disclose their access code and must inform the Bureau if they suspect another person is using their access code. (Bureau of Automotive Repairs, Smog Check Manual, Jan. 2021 (Smog Check Manual), § 1.1.0.) As of May 1, 2023, after the events relevant to this case, the Bureau implemented a biometric handprint scan in place of the badge and passcode to identify the technician.

11. The next step in an OIS inspection is for the technician to identify the vehicle by scanning a bar code of the VIN located on the vehicle or its DMV registration paper. (Smog Check Manual, § 1.1.1.) The technician must verify that the scanned VIN corresponds with the vehicle being tested and must ensure that all vehicle information is complete and correct, or make the necessary corrections. (*Ibid.*)

12. The technician must also conduct a functional test of the vehicle's Malfunction Indicator Light (MIL, commonly known as a "check engine light"). To check MIL function, the technician first turns the ignition to the "key on engine off" position, at which point the MIL should illuminate. The technician then turns the ignition to the "key on engine running" position, at which point the MIL should stop illuminating and remain so. The MIL must function properly for the vehicle to pass inspection. (Smog Check Manual, § 1.4.2.)

13. The technician must also use a certified Data Acquisition Device to connect the OIS analyzer to the tested vehicle's On-Board Diagnostics system. Once connected, the OIS retrieves data from the vehicle for one to two minutes, analyzes it, and transmits data to the Bureau's vehicle information database.

14. The OIS inspection also includes visual inspections as outlined in the Smog Check Manual. Visual inspection of the vehicle's emission control components verifies that the required emission control devices are present and properly connected.

15. The OIS software determines whether the vehicle passes the inspection based on the results of the functional, on-board diagnostics, and visual tests. At the conclusion of the inspection, the technician must re-enter their identifying credentials. If the vehicle passes inspection the OIS will prompt the technician by asking if a certificate of compliance is requested, and the technician will answer "yes" or "no." The OIS will issue a certificate of compliance which electronically transmits to the Department of Motor Vehicles and records in the Bureau's vehicle information database.

16. Only agents of the Bureau can access the information in the Bureau's vehicle information database. In the database, Bureau agents can view test data on

Smog Check inspections performed at any smog check station and can retrieve a test record for a particular vehicle which has been tested. The database has an internal clock that records the time and date for each inspection.

17. Clean plugging is the illegal practice of using another vehicle's On-Board Diagnostics system, or a simulator device, during the on-board diagnostic portion of a smog check inspection to generate passing data readings for the purpose of fraudulently issuing smog certificates to vehicles that are not in compliance or not actually tested.

History of Discipline

18. The Bureau previously issued two citations against the ARD registration and Test-Only Station license held by Truong, doing business as MT Smog Check-Star Station.

In June 2015, the Bureau issued a \$1,000 citation for using the wrong testing method on a single vehicle. A Bureau conference was held, after which Truong filed an informal appeal. The Bureau dismissed the citation in September 2015.

The Bureau issued another \$1,000 citation in February 2019, for issuing a certificate of compliance to a Bureau undercover vehicle with a missing or modified positive crankcase ventilation system. A Bureau conference was held in March 2019, the citation became effective April 14, 2019, and was paid the next day.

19. On March 4, 2020, the Bureau suspended for 30 days the STAR Certification issued to Truong, doing business as MT Smog Check-Star Station, pursuant to a Stipulated Settlement and Order. The facts leading to the suspension are not in the record.

20. The Bureau issued a citation and order of abatement against Truong's Smog Check Inspector license in September 2018, for having issued a certificate of compliance to a Bureau undercover vehicle with missing or modified exhaust gas recirculation system components. He was directed to complete an eight-hour Certified Smog Check Station Training Course.

21. There is no other history of discipline in the record concerning the respondents.

Station Inspections and Conferences

22. MT Smog Check-Star Station (Station) was inspected in person on various dates by one or more of three Bureau representatives: Christopher Montoya, Eluterrio Cervantes, and Michael Weaver. Montoya, Cervantes, and Weaver prepared written reports of their inspections, took photographs, and testified consistently with their reports.

Montoya worked as a licensed Smog Check Inspector and Smog Check Repair Technician from 2010 to 2019, joined the Bureau as a Program Representative I in 2019, and after several promotions currently serves as an Automotive Program Supervisor I, supervising statewide staff and auditing stations to combat fraudulent clean plugging.

Cervantes worked as an automotive technician for 18 years before joining the Bureau in 2016 as a Program Representative I. After promotions, Cervantes currently serves as a supervisor with the Bureau's forensic documentation program.

Weaver joined the Bureau six years ago as a Program Representative I. After promotions, he currently serves as an Automobile Program Representative. He has

held some form of smog check license for 30 years and owned and operated his own smog check test and repair station for 15 years.

OCTOBER 8, 2020, INSPECTION

23. On October 8, 2020, Montoya, Cervantes, and Weaver conducted an unscheduled inspection of the Station. Before arriving, Montoya checked the Bureau's vehicle information database and saw that testing was being conducted under respondent Nguyen's license. However, Nguyen was not present when representatives entered the Station. A different technician, Huy Dinh, was present and performing inspections. At the time, Dinh was licensed to perform smog check inspections but not at the Station.

24. Bureau representatives documented the presence of multiple unsecured smog check technician license badges in the open for respondent Nguyen, respondent Pham, Dinh, and two other technicians who were not employed at the Station. The Bureau's license badges state on the back, "Keep this badge in your possession at all times while on the job." The Bureau representatives also documented the presence of bar codes corresponding with license badge numbers for Nguyen and Pham affixed to computers in the Station.

25. Bureau representatives observed a cabinet containing multiple electronic devices connected to a laptop and the OIS analyzer machine. Among the connected devices was a PICO scope, which is an electronic device used to measure and record data from a vehicle, that can also be used to gather data with which to simulate a vehicle's profile for clean plugging. Cervantes opined, based on his knowledge and experience, that there is no legitimate use for a PICO scope in a test-only facility, because a test-only facility does not diagnose.

26. Bureau representatives also observed a laptop computer in the Station that was running "Docklight" software, which is a program that is known to be used in clean plugging. Representatives documented handwritten instructions for performing fraudulent smog check inspections located next to a laptop computer and various technician license badges, as well as a page showing only a VIN, in bar code form.

27. Truong arrived approximately one hour after the Bureau representatives arrived, and Nguyen arrived about 30 minutes after that. When Truong arrived, he voluntarily provided to Cervantes electronic devices and the laptop that had been connected to the OIS analyzer. Montoya and Cervantes documented their observations of the improper equipment and unsecured badges and badge numbers in their written reports, which Truong signed. Nguyen signed Montoya's report.

28. Nguyen went to the Bureau's San Jose field office the next day and received a new access code. Cervantes met with Nguyen at the field office and documented a Proactive Conference in which he counseled Nguyen to perform smog check inspections in accordance with the Smog Check Manual, to follow smog check test procedures, and not to share his or use another person's access code.

29. On December 16, 2020, Cervantes re-visited the Station to return the laptop that Truong provided. Truong had stated that he could not be present but agreed to allow the laptop to be returned to the responsible managing employee. Pham, identified as the Station manager, signed that he received the laptop from Cervantes.

NOVEMBER 4, 2021, INSPECTION

30. On November 4, 2021, Bureau representatives Montoya and Weaver conducted another inspection of the Station. About one minute before entering the

Station, Montoya checked the Bureau's vehicle information database and saw that an inspection was in progress for a Ford F250 under the credential of Huy Dinh. When Montoya and Weaver entered the Station they saw an individual, later identified as Tom Nguyen, remove equipment from the F250 and walk to a room at the rear of the Station. Tom Nguyen is not licensed to conduct inspections at the Station. Huy Dinh was present but was not at the vehicle being tested.

31. Bureau representatives also saw a Kia Sorrento in the testing bay, with a cable plugged into its On-Board Diagnostics port. The cable was routed to a back room. In the back room were multiple laptops, thumb drives, and other electronic equipment. A laptop was running a Bluetooth application called "BlueSoleil" and an application called "OBDWiz" which is a computer program that has been used to create simulated vehicle profiles for clean plugging. Another closed laptop had an antenna plugged into a USB port. Bureau representatives also observed that improper cables were present including an extra-long cable that, based on representatives' knowledge and experience, did not comport with OIS specifications.

32. Pham arrived sometime later and voluntarily provided to Montoya and Weaver: two laptops, their entry PIN numbers, power cords, thumb drives, connector cables, additional cabling, and USB hubs. Pham also logged into one of the laptops in Montoya's presence.

33. Weaver and Montoya counseled Pham not to use the equipment, and Pham signed their reports. Pham is identified as the Station manager in both representatives' reports.

34. Weaver and Montoya concluded that equipment consisting of cheat devices used to simulate vehicles for clean plugging was present at the Station.

Relying on his knowledge and experience, Weaver stated he found it suspicious that an individual who was not registered to inspect at the Station was removing equipment from the Ford F250, that he was doing so mid-test, and that test cables were connected to a laptop computer instead of to the OIS analyzer.

FEBRUARY 14, 2022, OFFICE CONFERENCE

35. As a result of the November 4, 2021, inspection, and “a pattern of egregious behavior” including connected unapproved electronic devices to OIS analyzers and inspections being conducted under other technicians’ licenses, Cervantes and another Bureau representative held an Office Conference with Truong at the San Jose field office on February 14, 2022. They counseled Truong that technicians must not share their access codes with others and must not allow others to perform inspections using their credentials, must not enter into the test analyzer system information about any vehicle other than the one being tested, or issue false certificates of compliance, among other concerns. They offered to provide training for the Station’s technicians, and returned to Truong the equipment that Pham had surrendered on November 4, 2021.

NOVEMBER 22, 2022, CONFERENCE

36. Montoya visited the Station again on November 22, 2022. He conducted a Proactive Conference with Nguyen, advising him to follow all smog check laws and regulations and to be aware of the seriousness of the Bureau’s prior compliance efforts.

Instances of Clean Plugging from November 2022 to February 2023

37. Marc Ortega testified at hearing. He reviewed written reports and photographs by Montoya, Cervantes, and Weaver, reviewed data concerning individual smog check inspections that are maintained by the Bureau, and prepared a written Investigative Report dated March 20, 2023.

38. Ortega has worked for the Bureau for over 20 years. Since January 2025, Ortega has worked in the role of Automotive Program Specialist with duties that include analyzing smog check data, conducting undercover investigations, and preparing reports. He worked in automotive repair for 22 years before joining the Bureau, including as the licensed smog inspector and repair technician for a corporate automobile dealership. He is a master level technician and holds numerous certifications in automobile mechanic subspecialties.

39. Ortega described a component of the OIS protocol that is designed to detect fraudulent inspections. During data collection, the OIS may request a dynamic engine idle test (dynamic test). The dynamic test is prompted randomly at the conclusion of the on-board diagnostic portion of the test, and exists solely to identify fraudulent inspections. It does not affect whether a vehicle passes a smog check inspection. In the dynamic test, the technician is prompted to increase the vehicle's engine speed, maintain the higher speed until the conclusion of the test, turn off the vehicle, and disconnect the vehicle from the OIS analyzer.

40. During the dynamic test, the OIS collects and stores time-stamped data from the vehicle's sensors, including: engine speed in revolutions per minute (RPM), throttle position, manifold absolute pressure, and mass air flow.

41. Ortega testified that when he reviews data for the above sensors, he is looking for “realistic data” based on his knowledge and experience. He stated that he personally measured such data for five vehicles using the Bureau’s equipment. He observed that, each time, the sensor data showed an increase in RPM corresponded with an increase in the vehicle’s throttle position, an increase in mass air flow, and a decrease in the manifold absolute pressure. Ortega opined that, if the dynamic test data show that the engine speed increases, but there is no change in throttle position, manifold absolute pressure, or mass air flow, then the data could not have come from a gasoline-powered engine. Ortega reported that these opinions are based on his experience as a technician, from reviewing smog check data, and from his observations of five vehicle tests performed with Bureau equipment.

42. Ortega reviewed vehicle dynamic test data transmitted from the Station. He identified more than 200 smog inspections with anomalous data suggesting fraudulent use of a data simulator. All of these inspections were performed under the credential of Pham or Nguyen. Ortega estimated that approximately half were performed under each technician’s credential. The time frame of the more than 200 anomalous inspections was not established.

43. Ortega conducted a comprehensive review of 14 of the more than 200 anomalous inspections, including reviewing the vehicle inspection report and OIS test details report associated with each of the inspections. These 14 inspections occurred between November 2022 and February 2023 and concerned vehicles of a variety of makes, models, and years. Ortega reported that in eight of these inspections, a certificate of compliance was issued by the Station under Nguyen’s license, and in six of these inspections a certificate of compliance was issued by the Station under Pham’s license. In each of the 14 inspections, the vehicle inspection report states that

the vehicle passed inspection and provides the smog check certificate number that was issued.

44. In each of the 14 inspections Ortega reviewed, the data transmitted showed a significant increase in the engine speed (the RPM more than doubled) during the dynamic test, but the throttle position, manifold absolute pressure, and mass air flow readings were flat and showed no change.

45. Ortega concluded that in each of the 14 inspections, the data received by the Bureau could not have come from the vehicle purportedly tested, or any gasoline-powered engine, and came instead from a simulator. Ortega opined that, if there were a problem with a vehicle's sensors that report the dynamic test data, the vehicle would report a diagnostic trouble code or trigger the vehicle into "limp mode," which would illuminate the MIL (or "check engine light") and would also cause the vehicle to drive badly. Ortega verified that pursuant to the data transmitted for each vehicle test, there were no diagnostic test codes reported, and the MIL was not reported as illuminated.

46. The actual condition of the vehicles that received the 14 smog certifications is not in evidence. Whether the fraudulent certificates of compliance were used for registration purposes is not in evidence, nor is there evidence as to whether the 14 vehicles purportedly tested were still operating or emitting excess pollutants.

47. Evidence of who received payment for the 14 purported inspections, and how much, also is not in the record. However, based on his experience Ortega stated that clean plugging inspections cost more than an inspection that is not fraudulent, and that it can be requested for the convenience of being assured a favorable result,

such as by an automobile dealer. Ortega stated that when a dealer has its vehicles tested, it is likely that some vehicles would pass inspection even without a clean plug, whereas others would not.

Ultimate Findings

48. Ortega is a very qualified and experienced smog check technician and mechanic. His opinion that 14 intentionally fraudulent inspections were performed at the Station is persuasive. It is supported by the history of smog check inspections being conducted at the Station in the presence of improper devices that are associated with creating vehicle simulations, including devices connected to the OIS. There is no innocent explanation for the presence of the improper devices in the testing area at the Station. Respondents did not testify at hearing or offer any exculpatory evidence. Accordingly, it is found that 14 intentional instances of clean plugging occurred at the Station, using a simulator device. The information entered into the OIS, and the data transmitted to the Bureau, were not from the vehicles purportedly tested. The individuals who conducted the 14 clean plug inspections violated procedures contained in the Bureau's Smog Check Manual. They made untrue and misleading statements and committed acts of intentional fraud. By violating procedures for compliance with standards that control or eliminate motor vehicle air pollutants, these actions injured the people of the State of California.

49. The evidence does not establish that Truong himself conducted fraudulent inspections. However, Truong was aware, or by the exercise of reasonable care should have been aware, that fraudulent inspections were occurring at the Station. He was repeatedly advised of improper equipment in the testing area of the Station that is associated with clean plugging, including in November 2021 and February 2022. Truong issued 14 fraudulent certificates of compliance. Through his

technicians, Truong made 14 false vehicle inspection reports from November 2022 to February 2023. There is no evidence of bona fide error.

50. The evidence established that Nguyen conducted eight fraudulent inspections or allowed them to be conducted using his credentials, from November 2022 to February 2023.

51. The evidence established that Pham conducted six fraudulent inspections or allowed them to be conducted using his credentials, from November 2022 to February 2023.

Costs

52. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$18,731.34. The request consists of \$3,972.09 in investigative costs, all but \$395.29 of which is for Ortega's investigative report, together with \$14,759.25 for attorney services provided by the Department of Justice and billed to the Bureau, including \$14,417.25 billed to the Bureau through August 13, 2025, and an estimated \$342.00 in additional fees for legal services through the commencement of the hearing. The request is supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. These costs are found to be reasonable.

53. The documented costs relate to the investigation and enforcement concerning all respondents, except that several hours of enforcement time incurred for discovery and communications with counsel for Truong and Pham appear not to directly concern respondent Nguyen.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof in this proceeding, and the standard of proof is a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.) If respondents contend mitigation or rehabilitation, it is their burden to prove those contentions by a preponderance of the evidence. (*Whetstone v. Board of Dental Examiners of Cal.* (1927) 87 Cal.App. 156, 164; Evid. Code, § 115.)

2. To ensure accountability of licensees and safeguard the public welfare, a licensee's duties are nondelegable; a licensee may be disciplined for the acts of the licensee's agents, including contractors and employees. (*Cal. Assn. of Health Facilities v. Dept. of Health Services* (1997) 16 Cal.4th 284, 296.)

Statute of Limitations – Actions Discovered October 8, 2020

3. All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the Bureau's discovery of the alleged facts constituting fraud or misrepresentation. (Bus. & Prof. Code, § 9884.20.)

4. As to all respondents, actions discovered on October 8, 2020, do not establish cause for discipline because they occurred and were discovered more than three years before complainant issued the accusation on October 31, 2023.

Causes for Discipline against Respondent Truong

FIRST CAUSE FOR DISCIPLINE

(UNTRUE OR MISLEADING STATEMENTS – REGISTRATION)

5. The Director of the Department (Director) is authorized to discipline the registration of an automotive repair dealer that makes an untrue or misleading statement, including through conduct by an automotive repair dealer's technician, employee, partner, or officer, "which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading," where the automotive repair dealer cannot show there was a bona fide error. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) Cause exists to discipline Truong's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(1), by reason of the matters stated in Factual Findings 48 and 49.

SECOND CAUSE FOR DISCIPLINE

(FRAUD – REGISTRATION)

6. The Director may discipline the registration of an automotive repair dealer that commits an act that constitutes fraud, including through conduct by an automotive repair dealer's technician, employee, partner, or officer. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) The evidence established that Truong, through his technicians, committed acts of fraud. (Factual Findings 48, 49.) Cause exists to discipline Truong's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(4).

THIRD CAUSE FOR DISCIPLINE

(FALSE OR MISLEADING RECORDS – REGISTRATION)

7. The Director may discipline the registration of an automotive repair dealer that issues false or misleading certificates of compliance and vehicle inspection reports, including through conduct by an automotive repair dealer’s technician, employee, partner, or officer. (Bus. & Prof. Code, § 9884.7, subd. (a)(6); Cal. Code Regs, tit. 16, § 3373.) The evidence established that Truong issued 14 false certificates of compliance and vehicle inspection reports from November 2022 to February 2023. (Factual Findings 48, 49.) Cause exists to discipline Truong’s ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3373.

FOURTH CAUSE FOR DISCIPLINE

(DISHONESTY, FRAUD, OR DECEIT – SMOG LICENSES)

8. Health and Safety Code sections 44072.2, subdivision (d), and 44072.10 (effective January 1, 2002, to December 31, 2023)¹ authorize the Bureau to discipline the smog check station and technician licenses of a licensee who commits any act involving dishonesty, fraud, or deceit whereby another is injured, by fraudulently certifying or participating in the fraudulent inspection of vehicles, including, but not

¹ Health and Safety Code section 44072.10 was amended, effective January 1, 2024, to expressly prohibit clean plugging. At all relevant times, section 44072.10 prohibited fraudulently certifying or participating in the fraudulent inspection of vehicles.

limited to, by tampering with a vehicle emission test analyzer system. The 14 fraudulent smog inspections at the Station involved dishonest, fraudulent, and deceitful acts which caused injury to the people of the State of California. (Factual Findings 6, 48, and 49.) Cause exists to discipline Truong's Smog Check Station and Smog Check Inspector licenses under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10.

FIFTH CAUSE FOR DISCIPLINE

(VIOLATION OF MOTOR VEHICLE INSPECTION PROGRAM – SMOG LICENSES)

9. The Director may discipline the smog check station and technician licenses of a licensee who violates statutes and regulations implementing the motor vehicle inspection program. (Health & Saf. Code §§ 44072.2, subds. (a) and (c); 44072.10.) Truong violated applicable statutes and regulations when he, through his technicians: (a) failed to ensure that smog inspections were performed on vehicles in accordance with procedures prescribed by the department (Health & Saf. Code, § 44012); (b) falsely or fraudulently issued electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); (c) failed to inspect vehicles in accordance with Health and Safety Code section 44012 and California Code of Regulations title 16, section 3340.42 (Cal. Code Regs., tit. 16, § 3340.30, subd. (a)); (d) entered false information about vehicles being tested into the OIS (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)); (e) possessed in the Station testing area, electronic devices or software capable of simulating the On-Board Diagnostics data stream from a vehicle or manipulating On-Board Diagnostics VIN, calibration identification, calibration verification number, MIL status, readiness, or diagnostic trouble codes collected from a vehicle during a smog check inspection (Cal. Code Regs., tit. 16,

§ 3340.41, subd. (h)); (f) failed to conduct required smog tests and inspections in accordance with the Bureau's specifications (Cal. Code Regs., tit. 16, § 3340.42); and (g) violated procedures contained in the Bureau's Smog Check Manual by entering vehicle information for a vehicle that was not being tested (Cal. Code Regs., tit. 16, § 3340.45). Cause exists to discipline Truong's Smog Check Station and Smog Check Inspector licenses under Health & Safety Code sections 44072.2, subdivisions (a) and (c), and 44072.10, in light of the matters set forth in Factual Findings 30 to 34, 48, and 49.

Causes for Discipline against Respondent Nguyen

SIXTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD, OR DECEIT)

10. The eight fraudulent smog inspections Nguyen conducted or permitted to be conducted using his license involved dishonest, fraudulent, and deceitful acts which caused injury to the people of the State of California. Cause exists to discipline Nguyen's Smog Check Inspector license under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, in light of the matters set forth in Findings 6, 48, and 50.

SEVENTH CAUSE FOR DISCIPLINE (VIOLATION OF MOTOR VEHICLE INSPECTION PROGRAM)

11. Nguyen violated applicable statutes and regulations when he, by using or allowing others to use his license: (a) failed to ensure that smog inspections were performed on vehicles in accordance with procedures prescribed by the department (Health & Saf. Code, § 44012); (b) willfully made false statements in issuing eight smog certificates of compliance and on the vehicle inspection reports (Health & Saf. Code,

§ 44059); (c) falsely or fraudulently issued electronic certificates of compliance to eight vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); (d) failed to inspect vehicles in accordance with Health and Safety Code section 44012 and California Code of Regulations title 16, section 3340.42 (Cal. Code Regs., tit. 16, § 3340.30, subd. (a)); (e) entered false information about vehicles being tested into the OIS (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)); (f) failed to conduct required smog tests and inspections in accordance with the Bureau's specifications (Cal. Code Regs., tit. 16, § 3340.42); and (g) violated procedures contained in the Bureau's Smog Check Manual by entering vehicle information for a vehicle that was not being tested (Cal. Code Regs., tit. 16, § 3340.45). Cause exists to discipline Nguyen's Smog Check Inspector license under Health & Safety Code sections 44072.2, subdivisions (a) and (c), and 44072.10 in light of the matters set forth in Factual Findings 48 and 50.

Causes for Discipline against Respondent Pham

EIGHTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD, OR DECEIT)

12. The six fraudulent smog inspections Pham conducted or permitted to be conducted using his license involved dishonest, fraudulent, and deceitful acts which caused injury to the people of the State of California. Cause exists to discipline Pham's Smog Check Inspector and Smog Check Repair Technician licenses under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10 in light of the matters set forth in Factual Findings 6, 48 and 51.

NINTH CAUSE FOR DISCIPLINE (VIOLATION OF MOTOR VEHICLE INSPECTION PROGRAM)

13. Pham violated applicable statutes and regulations when he, by using or allowing others to use his license: (a) failed to ensure that smog inspections were performed on vehicles in accordance with procedures prescribed by the department (Health & Saf. Code, § 44012); (b) willfully made false statements in issuing six smog certificates of compliance and on the vehicle inspection reports (Health & Saf. Code, § 44059); (c) falsely or fraudulently issued electronic certificates of compliance to six vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); (d) failed to inspect vehicles in accordance with Health and Safety Code section 44012 and California Code of Regulations title 16, section 3340.42 (Cal. Code Regs., tit. 16, § 3340.30, subd. (a)); (e) entered false information about vehicles being tested into the OIS (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)); (f) failed to conduct required smog tests and inspections in accordance with the Bureau's specifications (Cal. Code Regs., tit. 16, § 3340.42); and (g) violated procedures contained in the Bureau's Smog Check Manual by entering vehicle information for a vehicle that was not being tested (Cal. Code Regs., tit. 16, § 3340.45). Cause exists to discipline Pham's Smog Check Inspector license under Health & Safety Code sections 44072.2, subdivisions (a) and (c), and 44072.10, in light of the matters set forth in Factual Findings 48 and 51.

Other Matters – Respondent Truong

14. Business and Professions Code section 9884.7, subdivision (c), provides that the Bureau may suspend, revoke, or place on probation the registration for all places of business operated in this state by Truong, upon a finding that he has engaged in a course of repeated and willful violations of the laws and regulations

pertaining to an automotive repair dealer. Such a course of repeated and willful violations has been established, based on Factual Findings 48 and 49, and Legal Conclusions 5 through 7.

Other Matters – All Respondents

15. Health and Safety Code section 44072.8 provides that if the Bureau revokes a license, any additional license issued under chapter 5 of part 5 of division 26 of the Health and Safety Code in the name of that licensee may also be revoked.

Discussion

16. In exercising its licensing and disciplinary functions, the Bureau's highest priority is the protection of the public. (Bus. & Prof. Code, § 9880.3.) The purpose of license discipline is protection of the public through the prevention of future harm, and the improvement and rehabilitation of the licensee. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) The Bureau's guidelines for disciplinary penalties (Cal. Code Regs., tit. 16, § 3395.4) have been considered in reaching the determination of the appropriate discipline. For the violations involved here, the guidelines recommend a minimum of license revocation, stayed during a five-year period of probation, and a maximum of outright revocation. Evidence that an unlawful act was part of a pattern or practice is a factor in aggravation, as is evidence of conduct that constitutes fraud or gross negligence and a prior history of citations and disciplinary action. Absence of prior disciplinary action, where applicable, is a factor in mitigation, as is evidence of voluntary participation in retraining and initiation of steps to minimize recurrence. The absence of any new allegations or amendments to the accusation may not be regarded as evidence of mitigation.

RESPONDENT TRUONG

17. The 14 instances of clean plugging at Truong's Station, together with the inspection of the Station in November 2021 and conference with him in February 2022, show a pattern or practice of allowing intentional fraud to occur at his Station. Truong does not appear to have personally conducted fraudulent smog check inspections. However, he allowed clean plugging to occur. He received previous citations and his STAR certification was previously suspended. Evidence of recent retraining or steps to prevent recurrence is absent from the record. The evidence shows that Truong cannot be trusted to perform smog inspections in accordance with the Bureau's specifications. Public protection requires revocation of Truong's ARD registration, Smog Check, Test-Only Station license, and Smog Check Inspector license.

RESPONDENT NGUYEN

18. Nguyen has no prior record of discipline, a factor in mitigation. However, the eight instances of clean plugging from November 2022 to February 2023, together with Bureau representatives' conferences with him in October 2020 and November 2022, show a pattern or practice of intentional fraud. The evidence shows that Nguyen cannot be trusted to perform smog inspections in accordance with the Bureau's specifications. Public protection requires revocation of Nguyen's Smog Check Inspector license.

RESPONDENT PHAM

19. Pham has no prior record of discipline, and he cooperated with Bureau representatives, both factors in mitigation. However, the six instances of clean plugging from November 2022 to February 2023, together with his interactions with Bureau representatives in November 2021 and the presence of his unsecured

technician badge in October 2020, show a pattern or practice of intentional fraud. Evidence of retraining, steps to prevent recurrence, or other explanation, is absent from the record. The evidence shows that Pham cannot be trusted to perform smog inspections in accordance with the Bureau's specifications. Public protection requires revocation of Pham's Smog Check Inspector and Smog Check Repair Technician licenses.

Costs

20. Pursuant to Business and Professions Code section 125.3, a complainant may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. Cause exists to order respondents, jointly and severally, to pay the Board's costs in the amount of \$18,731.34. (Factual Finding 52, Legal Conclusions 5 to 13.)

21. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether costs should be assessed in the particular circumstances of each case. The Bureau must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain a dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when the Bureau has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at pp. 44-45.)

22. Truong and Pham, through counsel, ask that the costs be apportioned among the three respondents or otherwise reduced commensurate with their degree

of contribution to wrongdoing. If anything, costs associated with Truong and Pham are greater than those for Nguyen, although the costs relate generally to the investigation and enforcement concerning all respondents. (Factual Finding 53.) No cause to reduce or apportion the costs assessed against Truong and Pham was established.

ORDER

1. Automotive Repair Dealer Registration No. ARD 271677, issued to Thong Cong Truong, doing business as MT Smog Check-Star Station, is revoked.
2. Smog Check, Test-Only, Station License No. TC 271677, issued to respondent Thong Cong Truong, doing business as MT Smog Check-Star Station, is revoked.
3. Smog Check Inspector License Number EO 634361, issued to respondent Thong Cong Truong is revoked.
4. Any other automotive repair dealer registrations issued to respondent Thong Cong Truong are revoked.
5. Any other licenses issued to respondent Thong Cong Truong under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code are revoked.
6. Smog Check Inspector License Number EO 636469, issued to respondent Chinh Nguyen, is revoked.
7. Any other licenses issued to respondent Chinh Nguyen, under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code are revoked.

8. Smog Check Inspector License Number EO 633121, issued to respondent Robert Thanh Pham, is revoked.

9. Smog Check Repair Technician Number EI 633121, issued to respondent Robert Thanh Pham, is revoked.

10. Any other licenses issued to respondent Robert Thanh Pham under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code are revoked.

11. Respondents Thong Cong Truong, Chinh Nguyen, and Robert Pham, jointly and severally, are ordered to pay the Bureau of Automotive Repair its costs of investigation and enforcement of \$18,731.34.

DATE: **09/15/2025**

Signed Copy on File
STEPHANIE E. HAFFNER
Administrative Law Judge
Office of Administrative Hearings