

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

In the Matter of the Accusation Against:

NORMAN MIGUEL MEJIA AVILA dba CLEAN AIR SMOG

23910 Alessandro Blvd., Suite B

Moreno Valley, CA 92553

Automotive Repair Dealer Registration No. ARD 288638

Smog Check Test Only Station License No. TC 288638

NORMAN MIGUEL MEJIA AVILA

1877 Triste Ct.

Riverside, CA 92501

Smog Check Inspector License No. EO 641445

Respondents.

Case No. 79/24-16055

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OAH No. 2025060645

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 March 5, 2026.

IT IS SO ORDERED January 28, 2026.

Signature on file

GRACE ARUPO RODRIGUEZ

Assistant Deputy Director

Legal Affairs Division

Department of Consumer Affairs

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

In the Matter of the Accusation Against:

NORMAN MIGUEL MEJIA AVILA dba CLEAN AIR SMOG

Automotive Repair Dealer License No. ARD 288638

Smog Check, Test-Only, License No. TC 288638

and

NORMAN MIGUEL MEJIA AVILA

Smog Check Inspector License No. EO 641445,

Respondents.

Case No. 79/24-16055

OAH No. 2025060645

PROPOSED DECISION

Michelle C. Hollimon, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on November 19, 2025.

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

Frank C. Brucculeri of Frank Brucculeri Law Corporation represented respondents Norman Miguel Mejia Avila dba Clean Air Smog and Norman Miguel Mejia Avila.¹ Respondent was present throughout the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 19, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 2, 2017, the BAR issued Automotive Repair Dealer (ARD) Registration Number ARD 288638 to respondent Norman Miguel Mejia Avila dba Clean Air Smog. The ARD registration was in full force and effect at all times relevant to the allegations in this matter and will expire on October 31, 2026, unless renewed.

2. On October 19, 2017, the BAR issued Smog Check, Test-Only, Station (TC) License Number TC 288638 to Norman Miguel Mejia Avila dba Clean Air Smog. The TC

¹ All references to respondent(s) in this matter refer to Norman Miguel Mejia Avila dba Clean Air Smog and Norman Miguel Mejia Avila, collectively and/or individually. Norman Miguel Mejia Avila was the sole owner of Clean Air Smog at all times relevant to these proceedings.

license was in full force and effect at all times relevant to the allegations in this matter and will expire on October 31, 2026, unless renewed.

3. On January 30, 2018, the BAR issued a STAR station certification to respondent that remains active unless the ARD registration and/or Smog Check station license is revoked, canceled, licenses become delinquent, or certification is suspended.

4. On October 8, 2018, the BAR issued Smog Check Inspector (EO) License Number EO 641445 to respondent Norman Miguel Mejia Avila. The EO license was in full force and effect at all times relevant to the allegations in this matter and will expire on April 30, 2026, unless renewed.

5. On February 12, 2025, complainant signed the accusation in this matter in his official capacity against respondents alleging eight total causes for discipline related to multiple alleged fraudulent smog checks that occurred between December 14, 2023, and August 9, 2024. The accusation alleged that the ARD registration and TC license issued to respondent Norman Miguel Mejia Avila dba Clean Air Smog should be disciplined for: (1) making untrue and/or misleading statements; (2) conduct constituting fraud; (3) failing to comply with the motor vehicle inspection program; (4) failing to comply with regulations pursuant to the motor vehicle inspection program; and (5) dishonesty, fraud or deceit. The accusation further alleged that the EO license issued to respondent Norman Miguel Mejia Avila should be disciplined for: (1) violations of the motor vehicle inspection program; (2) failing to comply with regulations pursuant to the motor vehicle inspection program; and (3) dishonesty, fraud or deceit. Complainant seeks revocation or suspension of the ARD registration issued to Norman Miguel Mejia Avila dba Clean Air Smog, and any other ARD registration issued to Norman Miguel Mejia Avila dba Clean Air Smog; revocation or suspension of the TC license issued to Norman Miguel Mejia Avila dba Clean Air Smog,

and any other license issued to Norman Miguel Mejia Avila under the Motor Vehicle Inspection Program; revocation or suspension of the EO license issued to Norman Miguel Mejia Avila; and recovery of costs of investigation and enforcement in this matter.

6. Respondents timely filed a notice of defense, and this hearing followed.

Investigation and Testimony of Steve Koch

7. The following factual findings are derived from the testimony of Steve Koch, documents he compiled during his investigation, and the report he completed in connection with his investigation of respondents, all of which were admitted into evidence.

8. Mr. Koch is a Program Representative I with the BAR, where he has worked for over 25 years. Mr. Koch works with both licensed facilities and consumers, and his job duties include station inspections and investigations, primarily related to smog checks. Mr. Koch testified that he has performed several hundred smog investigations for the BAR. Mr. Koch has an automotive technology degree, is an Automotive Service Excellence certified master technician, and has had his smog inspector license since 1996. Prior to working at the BAR, he worked as a general mechanic for approximately 10 years.

9. Mr. Koch testified that California's smog check program uses an On-Board Diagnostic Inspection System (OIS). Since 1996, the On-Board Diagnostic II (OBD-II) has been the standard communication protocol used in vehicles. An OBD-II functional test is part of a smog inspection and uses a certified Data Acquisition Device (DAD) that communicates between the OIS and the tested vehicle to collect data from the tested vehicle. During some smog inspections, inspectors are instructed

to collect dynamic data to validate data pulled during the smog inspection. Dynamic data collection (DDC) is not part of every smog test, but some stations may be required to produce dynamic data for all of their station's inspections, and DDC is required of every station at some point.

10. If DDC is required during a smog inspection, the inspector is instructed to increase the vehicle's revolutions per minute (RPMs). Sensor changes are expected with increased RPMs. A gasoline engine cannot function if RPMs increase but there are no other changes, such as changes in manifold pressure and ignition timing. Lack of data change is indicative of an OBD-II simulator device being used. An OBD-II simulator is a programmable device used to mimic the information a tested vehicle would generally produce during a smog test for vehicles that would not pass the OBD-II portion of the smog test. An OBD-II simulator device used in this manner is sometimes referred to as "clean plugging."

11. Mr. Koch testified that an in-person inspection of a smog station is not necessary to determine instances of clean plugging. The dynamic data that is collected during smog testing alone is enough to determine if a fraudulent test has been performed. He reviews smog check data submitted to the BAR on an almost daily basis, and if he discovers anomalies with data submitted by a smog station, he will investigate further. This type of data review is what prompted him to investigate Clean Air Smog. Mr. Koch wrote an investigation report summarizing his investigation findings, which was admitted into evidence.

12. Mr. Koch noted in his investigation report that respondent had an office conference with two BAR program representatives on May 19, 2022. A written report from that office conference signed by both BAR program representatives and respondent was admitted into evidence (May 2022 report.) The May 2022 report states

that BAR representative Steven Blakely, on a date not provided, observed an unlicensed person perform two smog inspections using respondent's access code for Clean Air Smog's OIS unit. Respondent was informed that failure to comply with the Automotive Repair Act (ARA) could result in disciplinary action and future violations of the ARA could lead to formal legal action.

13. Beginning in May 2023, a biometric palm scanner was required for use in smog testing. Smog technicians initially had their palm scanned at a BAR field office. Smog technicians are required to scan their palm before and after each OIS functional test conducted of a vehicle.

14. Mr. Koch included 10 vehicles in his investigation report as examples of fraudulent inspections at Clean Air Smog using clean plugging, all issued under license number EO 641445 issued to respondent Norman Miguel Mejia Avila, as follows:

- Vehicle One - 2003 Mercedes Benz S 500: vehicle was tested and smog certificate number IX965323C issued on December 14, 2023
- Vehicle Two - 2001 Chevy Silverado C1500: vehicle was tested and smog certificate number TQ233767C issued on January 10, 2024
- Vehicle Three – 2000 Honda Civic DX: vehicle was tested and smog certificate number TS000724C issued on January 18, 2024
- Vehicle Four – 2002 Mitsubishi Lancer ES: vehicle was tested and smog certificate number TS000740C issued on January 19, 2024
- Vehicle Five – 2000 Chevrolet Silverado C1500: vehicle was tested and smog certificate number TS091458C issued on January 21, 2024

- Vehicle Six – 2006 Acura TSX: vehicle was tested and smog certificate number TY031579C issued on May 24, 2024
- Vehicle Seven – 2002 Chevrolet Tahoe C1500: vehicle was tested and smog certificate number UC149184C issued on August 7, 2024
- Vehicle Eight – 2002 Lexus IS 300: vehicle was tested and smog certificate number IZ760789C issued on August 9, 2024
- Vehicle Nine – 2001 Toyota Sienna CE: vehicle was tested and smog certificate number IZ760790C issued on August 9, 2024
- Vehicle 10 – 2002 Toyota RAV4: vehicle was tested and smog certificate number IZ760791C was issued on August 9, 2024

15. Although he included examples of 10 specific vehicles in his investigation report, Mr. Koch testified that there were a “couple hundred” more false smog certifications issued by respondent from spring 2022 to December 2024, when he wrote his investigation report.

16. Smog inspection stations purchase smog certificates in sequential blocks of 50 certificates. The smog station assigns a unique smog certificate to each passing test. The certificates associated with the 10 vehicles in Mr. Koch’s investigation report were purchased by Clean Air Smog between December 2, 2023, and August 9, 2024.

17. All 10 vehicles included in his report had the same issues with the data collected during their respective smog inspections – the reported parameter identifications (PIDs) did not match the expected PIDs. The RPM data reported for all 10 vehicles shows an increase in RPMs during smog testing, but no corresponding changes with other measurements such as the intake manifold pressure, ignition

timing and the air flow rate from the mass air flow sensor. Mr. Koch testified that this type of non-changing value is what is seen when a facility is trying to manipulate the OBD-II system with a simulator device, and why he determined clean plugging had occurred with regard to these 10 vehicles. Mr. Koch testified that using an OBD-II simulator is a "very deliberate act" and there is no other explanation for the type of data produced for the 10 vehicles inspected by Clean Air Smog and included in his report.

18. Of the 10 vehicles included in his investigation report, he found three of the 10 vehicles (Vehicle One, Vehicle Four and Vehicle Seven) had a prior failed smog inspection. With Vehicle Seven, there was no DDC requested. With Vehicle One and Vehicle Four, Mr. Koch testified that the PIDs from the failed inspections were what would be expected - when there was a change in RPMs, there were changes in other measurements like ignition timing and air flow rate. Mr. Koch testified on cross-examination that he had no evidence that respondent was aware of the prior failed smog inspections.

19. Mr. Koch testified, on cross-examination, that he did not know about DADs using a slower protocol for communication or "extremely slow" OBD-II communication speed. It is his understanding that PIDs are queued one at a time and he has never heard or seen glitches because of multiple PIDs being requested and overloading the system. Slower system speed, if true, would not impact the BAR getting smog inspection test results.

20. Mr. Koch concluded that clean plugging had occurred based on his investigation. Mr. Koch testified on cross-examination that he did not interview the registered owners of the vehicles, investigate whether any owners had a reason to and/or did install a defeat device themselves, or attempt to recover the defeat device

used. Defeat devices are well-protected and easily hidden in a drawer or backpack. Mr. Koch testified on cross-examination that no surveillance was done of Clean Air Smog. Surveillance was not conducted as the BAR stands behind the data collected during DDC and concludes that clean plugging occurred based on the data alone.

21. Mr. Koch testified that his investigation report was reviewed, and the data in his report was verified, by his team leader Raymond Gottenbos. BAR employees document time spent on, and write declarations regarding time spent on, specific matters.

Respondent's Testimony

22. Respondent elected not to testify on his own behalf. Complainant called respondent as a witness pursuant to Government Code section 11513, subdivision (b). Respondent testified that he understood the evidence as presented but otherwise refused to answer questions asserting his privilege against self-incrimination.

23. Respondent has a privilege to refuse to disclose any matter that may tend to incriminate him. (U.S. Const. 5th Amend.; Cal. Const., art. I, § 15; Evid. Code, § 940.) The rules of privilege are effective in administrative hearings to the extent they are otherwise required by statute to be recognized at the hearing. (Gov. Code, § 11513, subd. (e).) The privilege may be asserted in administrative hearings if the witness believes disclosure could implicate him in criminal activity and therefore subject the witness to criminal prosecution. (*Kastigar v. United States* (1972) 406 US 441, 444; *People v. Berry* (1991) 230 CA3d 1449, 1453.) The ALJ may not draw any inference, as to the witness's credibility or as to any matter at issue in the proceeding, from a witness exercising his privilege not to testify. (Evid. Code, §§ 910, 913, subd. (a).)

Cost Recovery

24. Complainant seeks costs related to investigation in this matter in the amount of \$2,573.90. In support of these costs, the BAR produced two declarations. The first declaration was a one-page declaration signed by Steve Koch on October 14, 2024, to which there was attached a two page "Case Hours and Costs Spreadsheet" that listed the time he spent between September 10, 2024, and October 8, 2024, performing "Review – Codes/Files/Documents/Records" (9 hours) and "Report Writing" (12 hours). The total time he spent was 21 hours and at the hourly rate of \$101.98, which amounted to \$2,141.58. The second declaration was a one-page declaration signed by Raymond Gottenbos, Program Representative II, on October 29, 2024, to which there was attached a two page "Case Hours and Costs Spreadsheet" that listed the time he spent on October 14, 2024, October 28, 2024, and October 29, 2024, performing "Case Review" on this matter. The total time he spent was 4 hours and at the hourly rate of \$108.08, which amounted to \$432.32. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(2), and the \$2,573.90 in costs requested were reasonable.

25. Complainant also seeks costs related to the enforcement of this matter in the amount of \$3,287.25 for costs incurred by the Attorney General's Office. A declaration certifying the total costs was signed by Deputy Attorney General Stephen A. Aronis, who prosecuted this disciplinary action. A billing summary was attached to his declaration that described the legal services provided, the dates legal services were performed, who provided the services, the amount of work that was performed on specific dates, and the professionals' hourly rates. The declaration provided a detailed summary for the costs of prosecution by the Department of Justice and incurred by the board through November 13, 2025. The certification and attached documents for

the costs incurred satisfy the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(1), with respect to costs incurred through August 19, 2025, in the amount of \$3,287.25. These costs are reasonable in both the nature and extent of the work performed.

26. Accordingly the total costs of investigation and enforcement of this matter is \$5,861.15, which is reasonable.

LEGAL CONCLUSIONS

Public Protection

1. "Protection of the public shall be the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Business and Professions Code section 9880.3.) Administrative proceedings to revoke, suspend, or impose discipline on a licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but to protect the public. (*Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

2. Air pollutants from automobiles are "the primary cause of air pollution" in many areas of California, and the control and elimination of air pollutants is necessary to protect public health. (Health and Safety Code section 43000, subdivisions (a), (b).) California's Motor Vehicle Inspection Program was enacted to ensure that California meets or exceeds emission reduction targets. (Health & Saf. Code, § 44000, et seq.)

Burden and Standard of Proof

3. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582.)

4. The standard of proof in proceedings to discipline automotive repair dealers, smog check stations, and/or smog check technicians is preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.)

5. Preponderance of the evidence means that the evidence on one side outweighs the evidence on the other side, "not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.) If the evidence is so evenly balanced that one side does not outweigh the other side, the party who had the burden of proof has failed to meet the burden. (*People v. Mabini* (2001) 92 Cal. App. 4th 654, 663.)

6. In disciplinary proceedings, the burden is on the respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

Applicable Statutory Authority

7. Business and Professions Code section 9884.7 states:
- (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.

[¶] . . . [¶]

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

8. Health and Safety Code section 44012 requires smog check station tests to “be performed in accordance with procedures prescribed by the department.”

9. Health and Safety Code section 44015, subdivision (b), provides “[i]f 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.”

10. Health and Safety Code section 44072.2 states:

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. . . .

11. Health and Safety Code section 44072.10, subdivision (c), states:

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, clean plugging, clean glassing, clean tanking, or any other fraudulent inspection practice, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

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

12. Health and Safety Code section 44072.8 provides:

When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

The chapter referenced in Health and Safety Code section 44072.8 is Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, the Motor Vehicle Inspection Program.

Applicable Regulatory Authority

13. California Code of Regulations title 16, section 3340.24, subdivision (c), provides the BAR authority to “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.”

14. California Code of Regulations title 16, section 3340.30, subdivision (a) requires licensed smog check inspectors and repair technicians to “inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.”

15. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides in part:

(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. . . .

16. California Code of Regulation, title 16, section 3340.41, subdivision (c), provides:

(c) 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 [Emission Inspection System] EIS or OIS. Nor shall any

person enter into the EIS or OIS any false information about the vehicle being tested.

17. California Code of Regulations, title 16, section 3340.42, states:

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.

(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not

limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

Applicable Case Law Regarding Fraud

18. Administrative disciplinary matters are akin to civil proceedings. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) A cause of action for fraud requires the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 127.)

19. All the elements must be present for fraud to be found. There is no absolute or fixed rule for determining what facts will constitute fraud; whether it is found depends upon the particular facts of the case under inquiry. Fraud may be proved by direct evidence, or it may be inferred from all of the circumstances in the case. (*Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674-675.) In an action regarding a private investigator's license, the Court of Appeal held:

Fraud 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.

(Wayne v. Bureau of Private Investigators and Adjusters, Department of Professional and Vocational Standards (1962) 201 Cal.App.2d 427, 437-438.)

Cause Exists to Impose Discipline

20. A preponderance of the evidence established that the 10 incidents of clean plugging that were the subject of the accusation in this matter occurred at Clean Air Smog and were performed by respondent Avila. Respondent's registration and licenses are subject to discipline for making untrue and misleading statements certifying the vehicles had passed smog inspections when they had not been properly inspected; issuing smog certificates of compliance without performing bona fide inspections; entering false information in the emissions inspection system; committing dishonest, fraudulent, and deceitful acts by issuing smog certificates without performing bona fide inspections; failing to perform emission control tests in accordance with the required procedures; and signing smog certificates of compliance under penalty of perjury, thereby falsely certifying that proper smog inspections had been performed.

21. A preponderance of the evidence established that the 10 vehicles issued certificates of compliance that are the subject of the accusation in this matter did not have the expected communication PID counts that would be expected for the type of vehicle tested. Although a fraudulent smog check was not observed, the unexpected OIS test data is sufficient to sustain the cause for discipline with respect to those vehicles.

22. As such, cause exists to discipline respondent's ARD registration, TC license, and EO license pursuant to Business and Professions Code sections 9884.7, subdivisions (a)(1) (untrue or misleading statements) and (a)(4) (fraud), Health and Safety Code section 44072.2, subdivisions (a) (failure to comply with the Motor Vehicle Inspection Program) and (d) (dishonesty, fraud or deceit), in conjunction with Health and Safety Code section 44072.10, subdivision (c), and Health and Safety Code 44072.2, subdivision (c) (failure to comply with the regulations pursuant to the Motor Vehicle Inspection Program).

Evaluation

23. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, the BAR must consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev. June 2021]. These guidelines provide the recommended sanctions for various violations. The recommended discipline for issuing fraudulent inspections (Health and Safety Code section 44072.10, subdivision (c)) is revocation. Factors in aggravation and mitigation may be considered when fashioning the appropriate measure of discipline.

24. Business and Professions Code section 9884.7, subdivision (c), provides that the registration for all places of business can be disciplined if the ARD license

holder has engaged in “repeated and willful violations” of statutes and regulations. Health and Safety Code section 44072.8 provide that when a registration or license has been revoked following a hearing, any additional license issued under the ARA and Motor Vehicle Inspection Program in the name of the licensee may be likewise revoked or suspended by the department’s director. Revocation of the additional licenses and registrations is not mandatory.

25. The data provided to the BAR from the vehicles at issue and analyzed by Mr. Koch demonstrated similar, unexpected test data in each instance. Mr. Koch credibly testified that the non-changing data values that were seen with all 10 vehicles are what is seen when an OBD-II simulator device is used. While Mr. Koch admitted he did not interview the registered owners of the vehicles, investigate whether any owners had a reason to and/or did install a defeat device themselves, attempt to recover the defeat device used, or conduct surveillance of Clean Air Smog, Mr. Koch credibly testified that there was no alternate explanation to explain the test results for the 10 vehicles at issue, other than clean plugging, and the data alone is sufficient to find clean plugging had occurred.

26. Respondent invoked his fifth amendment right against self-incrimination to almost all questions when called to testify. No negative inference was drawn from respondent’s refusal to testify. However, in turn, respondent provided no testimony in mitigation or evidencing rehabilitation. Respondent offered no plausible alternate explanation for the test results provided to the BAR. Respondent provided no documentary evidence or third party witness testimony.

27. In mitigation, there is no prior formal disciplinary action against respondent. However, respondent was previously warned by the BAR in 2022 that

failure to comply with the ARA could result in disciplinary action and future violations of the ARA could lead to formal legal action.

28. Respondent fraudulently issued certificates of compliance to vehicles that were not properly tested. Based on all of the above, the guideline's recommended discipline of revocation of respondent's registration and licenses is required for public protection.

Recovery of Costs

29. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case." (Business and Professions Code section 125.3, subd. (c).)

30. Under California Code of Regulations, title 1, section 1042, subsection (b), a cost request must be accompanied by a declaration or certification of costs. For services provided by persons who are not agency employees, the declaration must be executed by the person providing the service and describe the general tasks performed, the time spent on each task, and the hourly rate. In lieu of the declaration, the agency may attach copies of the time and billing records submitted by the service provider.

31. The California Supreme Court, in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, held that a regulation imposing costs for

investigation and enforcement under Business and Professions Code section 317.5, which is similar to section 125.3, did not violate due process. However, it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing.” (*Ibid.*)

32. *Zuckerman* sets forth five factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a “subjective” good faith belief in the merits of his or her position; whether the licensee raised a “colorable challenge” to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra*, at p. 45.)

33. Applying the *Zuckerman* criteria, leads to the following conclusions: (1) respondent was not successful in getting some of the charges dismissed or reduced; (2) respondent did not assert a good faith belief in his position; (3) respondent did not present a colorable challenge to revocation; (4) no evidence was provided regarding respondent’s financial ability to make payments; and (5) the scope of the investigation was appropriate in light of the alleged misconduct.

34. Respondent shall be responsible to pay costs to the BAR in the amount of \$5,861.15. However, the payment of costs shall be stayed until such time respondent seeks to reinstate his licenses or obtain another license or registration from the BAR. At that time, as a condition precedent to issuance of any license or registration, respondent shall pay the costs in full.

ORDER

1. Automotive Repair Dealer Registration Number ARD 288638 issued to respondent Norman Miguel Mejia Avila dba Clean Air Smog is revoked.
2. The ARD registration for all places of business operated in California by respondent Norman Miguel Mejia Avila, individually and/or under any fictitious business name, including Clean Air Smog, is revoked.
3. Smog Check, Test-Only, License Number TC 288638 issued to respondent Norman Miguel Mejia Avila dba Clean Air Smog is revoked.
4. Smog Check Inspector License Number EO 641445 issued to respondent Norman Miguel Mejia Avila is revoked.
5. Any additional license issued to respondent Norman Miguel Mejia Avila, individually and/or under any fictitious business name, including as Clean Air Smog, under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, the Motor Vehicle Inspection Program, is revoked.

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6. Respondent Norman Miguel Mejia Avila is ordered to pay costs in the amount of \$5,861.15. The payment of costs shall be stayed until such time respondent seeks to reinstate his licenses or obtain another license or registration from the Bureau of Automotive Repair. At that time, as a condition precedent to issuance of any license or registration, respondent shall pay the costs in full.

DATE: December 18, 2025

M. C. Hollimon

M. C. Hollimon (Dec 18, 2025 14:35:14 PST)

MICHELLE CARLISLE HOLLIMON

Administrative Law Judge

Office of Administrative Hearings