

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

In the Matter of the Accusation Against:

JULIO OSUNA, JR. dba MIDDLEFIELD SMOG CHECK

2800 B. Middlefield Rd.

Redwood City, CA 94063

Automotive Repair Dealer Registration No. ARD 263893

Smog Check Test Only Station License No. TC 263893

JULIO OSUNA, JR. dba J & A SMOG AND SERVICE

975 Woodside Rd.

Redwood, CA 94061

Mailing Address:

20531 Mission Blvd. Ste. B

Hayward, CA 94541

Automotive Repair Dealer Registration No. ARD 282539

Smog Check Station License No. RC 282539

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JULIO OSUNA, JR.

2800 Middlefield Rd.

Redwood City, CA 94063

Smog Check Inspector License No. EO 632519

Smog Check Repair Technician License No. EI 632519

JULIO J. OSUNA, JR.

302 Park Street

Redwood City, CA 94061

Smog Check Inspector License No. EO 642047

JULIO J. OSUNA, JR. dba OSUNA AUTO REPAIR

2802 Middlefield Rd.

Redwood City, CA 94063

Automotive Repair Dealer Registration No. ARD 231634

Respondents.

Case No. 79/22-10578

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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 December 15, 2023.

IT IS SO ORDERED this 6 day of November, 2023.



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

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

In the Matter of the Accusation Against:

**JULIO OSUNA, JR., dba MIDDLEFIELD SMOG CHECK,
Automotive Repair Dealer No. ARD 263893
Smog Check Station No. TC 263893;**

**JULIO OSUNA, JR., dba J & A SMOG AND SERVICE,
Automotive Repair Dealer No. ARD 282539
Smog Check Station No. RC 282539;**

**JULIO OSUNA, JR.,
Smog Check Inspector License No. EO 632519
Smog Check Repair Technician License No. EI 632519;**

**JULIO J. OSUNA,
Smog Check Inspector License No. EO 642047;
and**

**JULIO J. OSUNA, dba OSUNA AUTO REPAIR,
Automotive Repair Dealer No. ARD 231634**

Respondents.

Agency Case No. 79/22-10578

OAH No. 2023040211

PROPOSED DECISION

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, heard this matter on July 5 and 6 and August 16, 2023, 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 Julio Osuna, Jr., and Julio J. Osuna, who were present.

The record was held open for the parties to submit written closing arguments, to include argument regarding the admission of respondents' Exhibits N, O, and P. On September 8, 2023, respondents submitted a written closing argument and five documents, which were marked for identification as Exhibits Q through V. On September 11, 2023, complainant submitted a written closing argument and a cover letter, which were marked for identification as Exhibits 36 and 37. The arguments from the parties regarding the admission of respondent's Exhibits N, O, and P were considered and these exhibits were admitted into evidence. The record closed and the matter was submitted for decision on September 11, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 26, 2011, the Bureau of Automotive Repair (Bureau or BAR) issued Automotive Repair Dealer Registration No. ARD 263893 to Julio Osuna, Jr., owner, doing business as Middlefield Smog Check. On April 8, 2011, the Bureau issued Smog Check Station License No. TC 263893 to Julio Osuna, Jr., doing business as Middlefield Smog Check. On April 20, 2016, Middlefield Smog Check was certified as a STAR station. The registration and license were in full force and effect at all relevant times and are scheduled to expire on January 31, 2024, unless renewed.

2. On January 21, 2016, the Bureau issued Automotive Repair Dealer Registration No. ARD 282539 to Julio Osuna, Jr., owner, doing business as J & A Smog and Service. On February 9, 2016, the Bureau issued Smog Check Station License No. RC 282539 to Julio Osuna, Jr., owner, doing business as J & A Smog and Service. On May 23, 2016, J & A Smog and Service was certified as a STAR station and on March 3, 2023, the certification was suspended. The registration and license were in full force and effect at all relevant times and are scheduled to expire on January 31, 2024, unless renewed.

3. On December 17, 2013, the Bureau issued Smog Check Inspector License No. EO 632519 and Smog Check Repair Technician License No. EI 632519 to "Julio Osuna," who the evidence established was Julio Osuna, Jr.¹ The licenses were in full

¹ Julio Osuna, Jr., previously held Advanced Emission Specialist Technician License No. EA 632519, which was issued to him by the Bureau on September 22, 2010,

force and effect at all times relevant to the accusation and are scheduled to expire on March 31, 2024, unless renewed.

4. On June 20, 2019, the Bureau issued Smog Check Inspector License No. EO 642047 to Julio J. Osuna.² The license was in full force and effect at all times relevant to the accusation and is scheduled to expire on January 31, 2025, unless renewed.

5. In 2004, the Bureau issued Automotive Repair Dealer Registration No. ARD 231634 to Julio J. Osuna, owner, doing business as Osuna Auto Repair. This registration expired on January 31, 2020.

6. On November 28, 2022, complainant Patrick Dorais issued the accusation in his official capacity as the Chief of the Bureau. Complainant alleged that over approximately a one-year period in 2021 and 2022 at Middlefield Smog Check (Middlefield), respondents Julio Osuna, Jr., and Julio J. Osuna issued six fraudulent smog check certificates of compliance after performing inspections by a dishonest method known as "clean plugging," and that these alleged facts constitute cause to discipline respondents' registrations and licenses.

7. Respondents filed a notice of defense and this proceeding followed.

but was cancelled on December 17, 2013, with his election for smog check inspector and smog check repair technician licenses.

² Julio J. Osuna is the father of Julio Osuna, Jr.

Clean Plugging

8. Since March 2015, smog check inspections of most vehicles in California must be performed pursuant to the "BAR-OIS" (OIS) protocol. As part of an OIS inspection, the on-board diagnostic system of the vehicle being tested is connected to the Bureau's vehicle information database (VID) by means of a data acquisition device (DAD). All vehicles manufactured after 2005, and many manufactured earlier, have an electronic vehicle identification number (eVIN), which is identical to the vehicle identification number physically present on the vehicle. If the vehicle has an eVIN stored in its computer, the eVIN is transmitted during the OIS inspection. Vehicles also transmit a communication protocol during the OIS inspection. The protocol is programmed during the manufacturing process and does not change. Vehicles of the same year, make, and model use the same protocol. A parameter identification (PID) count is also transmitted during an OIS inspection. The PID count is the number of data points reported by the vehicle's computer. Each year, make, and model of vehicle will have an expected PID count (or range of expected PID counts). When performing a smog inspection, the technician is required to confirm that the VIN the technician has put into the OIS system is correct and matches the vehicle being tested.

9. Clean plugging is the illegal practice of using another vehicle's on-board diagnostic system, or another device, during the on-board diagnostic portion of a smog inspection. It can be detected when the eVIN, the protocol, or PID count transmitted by the vehicle that actually is connected to the VID does not match the data expected for the year, make, and model of the vehicle purportedly being inspected (expected data).

10. Ian Evans, an experienced Program Representative II for the Bureau,³ testified at hearing and his testimony was credible, consistent with the relevant documents, and persuasive in all respects. He performed a review of OIS data from Middlefield for an approximately two-year period ending on July 21, 2022. Based on his review of the data, Evans opined that six instances of clean plugging occurred in which a smog inspector knowingly entered false data into the OIS system and caused the fraudulent issuance of smog check certificates of compliance. Evans drafted a report analyzing and documenting the six instances based on his review of the OIS data. The six certified vehicles had a mixture of different, missing, and/or unexpected eVINs.

Evans explained that a smog inspector may identify the specific vehicle to be inspected through scanning the VIN directly from the vehicle (from multiple locations on the vehicle, including the driver's door and on the dashboard near the windshield), scanning the associated Department of Motor Vehicles (DMV) registration document, or entering it manually. He explained that the step-by-step process of conducting a smog test includes confirming through visual inspection that the correct vehicle is being tested.

11. There is no dispute between the parties that Julio J. Osuna failed to perform a proper smog check inspection regarding the six instances of clean plugging detailed below. The parties dispute the motivations of Julio J. Osuna in engaging in this misconduct. Complainant generally asserts that Julio J. Osuna must have engaged in intentional fraud as there was no "plausible explanation" for mixing up the paperwork, tested vehicles, and DADs while conducting the tests. Respondents

³ Evans retired from the Bureau in December 2022.

generally assert that Julio J. Osuna made simple mistakes that show “negligence, inadvertence, excusable neglect, and bona fide errors” but that did not demonstrate “intentional, willful, fraudulent conduct.” Respondents’ arguments that the six clean plugging incidents were mistakes rely heavily on the estimates, invoices, and other business records submitted by respondents into evidence. However, as highlighted through cross-examination, the sheer number of inconsistencies in the business records gave these documents little evidentiary weight.

CLEAN PLUG #1, AUGUST 7, 2021

12. On August 7, 2021, Julio J. Osuna issued a certificate of compliance to a 2000 Dodge Grand Caravan SE. While no eVIN was reported or expected to be reported, neither the protocol nor PID count matched the expected data. The Smog Check Vehicle Inspection Report (VIR) reported that he scanned the VIN from the vehicle and either manually entered or scanned the VIN from a DMV document. Because no eVIN was reported, the evidence did not establish what vehicle was actually connected to the DAD during the test. In a subsequent test of the 2000 Dodge Grand Caravan SE at a different station on August 11, 2021, the vehicle passed; as expected, no eVIN was reported, and the protocol and PID count matched the expected data.

CLEAN PLUG #2, AUGUST 29, 2021

13. On August 29, 2021, Julio J. Osuna issued a certificate of compliance to a 2006 Bentley Continental Flying Spur. The eVIN, protocol, and PID count did not match the expected data. The VIR reported that he scanned the VIN from the vehicle and either manually entered or scanned the VIN from a DMV document. The data (eVIN, protocol, and PID count) transmitted during the test, purportedly for the 2006 Bentley

Continental Flying Spur, completely matched the expected data for another vehicle, a 2013 Volkswagen GTI, which was issued a certificate of compliance by Julio J. Osuna at Middlefield the same day, but at a time later than the certificate issued for the 2006 Bentley Continental Flying Spur. Furthermore, the 2006 Bentley Continental Flying Spur was tested later that day at another station; the vehicle passed the test, and the eVIN, protocol, and PID count matched the expected data.

CLEAN PLUG #3, SEPTEMBER 19, 2021

14. On September 19, 2021, Julio J. Osuna issued a certificate of compliance to a 2016 Lexus GS350 Base. While the protocol matched the expected data, neither the eVIN nor PID count matched the expected data. The VIR reported that he manually entered or scanned the VIN from a DMV document. The data (eVIN, protocol, and PID count) transmitted during the test, purportedly for the 2016 Lexus GS3502 Base, completely matched the expected data for another vehicle, a 2006 Toyota Prius, which was issued a certificate of compliance by Julio J. Osuna at Middlefield on the same day. Furthermore, one day prior on September 18, 2021, the 2016 Lexus GS350 Base passed a smog test conducted by Julio J. Osuna at Middlefield and the eVIN, protocol, and PID count matched the expected data. Julio J. Osuna and Julio Osuna, Jr., testified the 2016 Lexus GS350 Base was not left at Middlefield overnight.

CLEAN PLUG #4, MARCH 22, 2022

15. On March 22, 2022, Julio J. Osuna issued a certificate of compliance to a 2001 Toyota RAV4. The eVIN, protocol, and PID count did not match the expected data. The VIR reported that he scanned the VIN from the vehicle and either manually entered or scanned the VIN from a DMV document. The data (eVIN reported, protocol, and PID count) transmitted during the test, purportedly for the 2001 Toyota RAV4,

completely matched the expected data for another vehicle, a 2007 Lexus IS 250, which was certified by Julio J. Osuna at Middlefield on April 6, 2022. A subsequent test of the 2001 Toyota RAV4 was performed at a different station on March 30, 2022; the vehicle passed, and, as expected, no eVIN was reported, and the protocol and PID count matched the expected data.

CLEAN PLUG #5, MAY 19, 2022

16. On May 19, 2022, Julio J. Osuna issued a certificate of compliance to a 2007 Pontiac G6 Base. The eVIN, protocol, and PID count did not match the expected data. The VIR reported that he scanned the VIN from the vehicle and either manually entered or scanned the VIN from a DMV document. The data (eVIN, protocol, and PID count) transmitted during the test, purportedly for the 2007 Pontiac Base, completely matched the expected data for another vehicle, a 2006 GMC New Sierra C1500. Furthermore, the 2006 GMC New Sierra C1500, was certified by Julio J. Osuna at Middlefield on May 20, 2022. A subsequent test of the 2007 Pontiac G6 Base was performed at a different station on June 28, 2022, when the vehicle did not pass, and the eVIN, protocol, and PID count matched the expected data.

CLEAN PLUG #6, MAY 27, 2022

17. On May 27, 2022, Julio J. Osuna issued a certificate of compliance to a 2002 Chevrolet Tahoe K1500. The eVIN, protocol, and PID count did not match the expected data. The VIR reported that he scanned the VIN from the vehicle and either manually entered or scanned the VIN from a DMV document. The eVIN from the test matched that of a 2014 Honda Accord EXL, which had not yet been subject to a smog test in California. One day prior on May 26, 2022, a test was performed by Julio J. Osuna at Middlefield on the 2002 Chevrolet Tahoe K1500, and during this test, the

eVIN, protocol, and PID count matched the expected data; however, the vehicle did not pass the test due to incomplete monitors.

Discipline Considerations

18. On July 15, 2011, Julio Osuna, Jr., was issued citation M2012-41. A citation service conference was held with him on August 17, 2011; he was required to complete an eight-hour training course; he completed the course on September 11, 2011; and the citation is now final. The facts and circumstances underlying the citation were not otherwise established by the evidence.

Respondent's Additional Evidence

RESPONDENT JULIO J. OSUNA

19. Julio J. Osuna's testimony was inconsistent and, at times, incoherent particularly regarding business records for Middlefield. Overall, little weight was given to his testimony.

20. Julio J. Osuna testified he owned and ran his own shop (Osuna Auto Repair) and has worked in the automotive industry for approximately 25 years. Around 2020 he decided to retire from his shop, obtain his smog check inspector license and work for his son at Middlefield. Middlefield only conducted smog checks and Julio J. Osuna was usually the only one working at Middlefield, although his son would be available by telephone to address concerns and would occasionally stop by late in the day after he finished working at his own shop (J & A Smog and Service).

21. Julio J. Osuna testified he had not used a computer before for his business, he was on his own, and he made mistakes at Middlefield. He described Middlefield as "high volume shop" and the pressure he felt dealing with impatient

customers who "were pissed off," with "cars lined down the streets" that resulted in complaints against the business, dealing with paperwork from multiple clients at the same time, and trying to complete smog inspections as quickly as possible.

22. Julio J. Osuna related an incident that occurred more than 20 years ago, prior to him running his own shop, when his boss asked him to conduct an improper smog test. His testimony was inconsistent as to whether or not he conducted the illegal smog test and whether or not a citation was issued by the Bureau associated with the test, but he stated he quit because of the incident. He testified he would never purposely clean plug a vehicle because he "was not raised that way."

RESPONDENT JULIO OSUNA, JR.

23. Julio Osuna, Jr., worked for his father as a general mechanic for approximately 15 years before he opened his own business (J & A Smog and Service) in approximately 2010. He works at his own shop on a daily basis and not at Middlefield.

24. Julio Osuna, Jr., testified that he knew Middlefield was a high volume business when he hired his father to work as the only smog check inspector at the station with no supervision, shortly after his father obtained his smog check repair technician license, and with the understanding that his father had no experience using a computer in running a business. He also knew that his father had such significant problems with creating daily business records (e.g., invoices and estimates) that he had to go to Middlefield on a regular basis to address the paperwork issues.

25. After the accusation was filed in the matter, Julio Osuna, Jr., testified he implemented various changes at Middlefield to include: he hired a part-time person to help Julio J. Osuna with paperwork on some afternoons; he had customers take a

number so everyone would know the order of customers being served, he instructed that customers keep their paperwork so it could not get mixed up; he directed Julio J. Osuna to slow down and complete fewer smog inspections per day; and he removed one of the DADs so there was only one remaining in the shop (to prevent "mix-ups").

26. Both telling and troubling, Julio Osuna, Jr., testified at hearing that he eventually plans to hire a second smog check repair technician to work with his father at Middlefield, but he will need to train the technician at his shop (J & A Smog and Service) because it was slower paced as opposed to Middlefield. He testified he did not want to start a new technician at Middlefield because he did "not want to throw them into the fire." He acknowledged the ongoing "fire" at Middlefield even after he implemented the various remedial measures described in Factual Finding 25.

Ultimate Factual Findings

27. In each of the six smog inspections identified by complainant, the vehicle purportedly tested was not the vehicle actually connected to the Bureau's VID by a DAD. The issuance of the six false certificates of compliance was fraudulent. Intentional fraud was shown by the number of false certificates and the circumstances associated with the clean plugging instances. The six certificates issued contained untrue or misleading statements. With the exercise of reasonable care respondents should have known the vehicles purportedly being tested were not the vehicles actually connected to the Bureau's VID. The issuance of six false certificates was not a bona fide error and caused injury to the people of California in the form of reduced protection by the smog test program and potentially increased harmful emissions. Julio Osuna, Jr., knowingly failed in his duty to supervise and ensure that Julio J. Osuna conducted legally compliant smog inspections.

Costs

28. The Bureau has incurred \$1,679.48 in investigation costs and \$9,206.25 in enforcement costs, for a total of \$10,885.73, to prosecute this accusation. These costs are supported by certifications that describe the tasks performed, time spent on each task, and method for calculating the cost, in compliance with the requirements of California Code of Regulations, title 1, section 1042. In the absence of any evidence to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

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; *Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434, 1441.) If a respondent contends mitigation or rehabilitation, it is his 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. The expiration of a valid registration does not deprive the Director of the Department of Consumer Affairs (Director) of jurisdiction to discipline a registration. (Bus. & Prof. Code, § 9884.13.)

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE: UNTRUE OR MISLEADING STATEMENTS

(RESPONDENT JULIO OSUNA, JR.)

3. The Director may discipline an automotive repair dealer registration for making or authorizing statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known, to be untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) By untruthfully reporting to the Bureau that the six vehicles had been properly inspected and by certifying these vehicles were in compliance, Julio Osuna, Jr., made untrue or misleading statements, which with the exercise of reasonable care he should have known were untrue, and those statements were not the result of bona fide error. (Factual Findings 12-17 & 27.) Cause exists to discipline Julio Osuna, Jr.'s, Middlefield automotive repair dealer registration under Business and Professions Code section 9884.7, subdivision (a)(1).

SECOND CAUSE FOR DISCIPLINE: FRAUD (RESPONDENT JULIO OSUNA, JR.)

4. The Director may discipline an automotive repair dealer registration for conduct that constitutes fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) The issuance of six false certificates of compliance was fraudulent and not the result of a bona fide error. (Factual Findings 12-17 & 27.) Cause exists to discipline Julio Osuna, Jr.'s, Middlefield automotive repair dealer registration under Business and Professions Code section 9884.7, subdivision (a)(4).

**THIRD CAUSE FOR DISCIPLINE: DISHONESTY, FRAUD, OR DECEIT
(RESPONDENT JULIO OSUNA, JR.)**

5. The Director may discipline a smog check station license for misconduct that involves any act of dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, §§ 44072.10, 44072.2, subd. (d).) The issuance of six false certificates was not a bona fide error and caused injury to the people of California in the form of reduced protection by the smog test program and potentially increased harmful emissions. (Factual Findings 12-17 & 27.) Cause exists to discipline Julio Osuna, Jr.'s, Middlefield smog check station license under Health and Safety Code sections 44072.10, and 44072.2, subdivision (d).

**FOURTH CAUSE FOR DISCIPLINE: FAILURE TO COMPLY WITH MOTOR VEHICLE
INSPECTION PROGRAM (RESPONDENT JULIO OSUNA, JR.)**

6. The Director is authorized to discipline the smog check station license of a licensee who violates any section of the Motor Vehicle Inspection Program (Health & Saf. Code, § 4400 et seq.) or associated regulations when conducting smog inspections. (Health & Saf. Code, §§ 44072.10, & 44072.2, subds. (a) & (c).) The six instances of clean plugging committed at Middlefield (Factual Findings 12-17 & 27) violated numerous statutes and regulations, including: Health and Safety Code section 44012 (failure to ensure emission control tests were performed on the vehicles for which certificates of compliance were issued); Health and Safety Code section 44059 (willful false statement with regard to a material matter in a certificate of completion); California Code of Regulations, title 16, section 3340.24, subdivision (c) (falsely or fraudulently issues a certificate of compliance); California Code of Regulations, title 16, section 3340.30, subdivision (a) (failure to test vehicles in accordance with Bureau

procedures); California Code of Regulations, title 16, section 3340.41, subdivision (c) (entered VIN information into BAR-OIS for vehicle other than the one being tested); California Code of Regulations, title 16, section 3340.42 (failure to perform smog inspections and tests of vehicles in accordance with Bureau procedures); and California Code of Regulations, title 16, section 3340.45 (failure to conduct inspections in accordance with Smog Check Manual). Cause exists to discipline Julio Osuna, Jr.'s, Middlefield smog check station license under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c) for violations of statutes and regulations.

**FIFTH CAUSE FOR DISCIPLINE: DISHONESTY, FRAUD, OR DECEIT
(RESPONDENT JULIO J. OSUNA)**

7. The issuance of six false certificates was not a bona fide error and caused injury to the people of California in the form of reduced protection by the smog test program and potentially increased harmful emissions. (Factual Findings 12-17 & 27.) Cause exists to discipline Julio J. Osuna's smog check inspector license under Health and Safety Code sections 44072.10 and 44072.2, subdivision (d).

**SIXTH CAUSE FOR DISCIPLINE: FAILURE TO COMPLY WITH MOTOR VEHICLE
INSPECTION PROGRAM (RESPONDENT JULIO J. OSUNA)**

8. The six instances of clean plugging committed by Julio J. Osuna (Factual Findings 12-17 & 27) violated numerous statutes and regulations, detailed in Legal; Conclusion 6. Cause exists to discipline Julio J. Osuna's smog check inspector license under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c) for violations of statutes and regulations.

SEVENTH CAUSE FOR DISCIPLINE: FRAUD (RESPONDENT JULIO J. OSUNA)

9. The issuance of six false certificates of compliance was fraudulent and not the result of a bona fide error. (Factual Findings 12-17 & 27.) Cause exists to discipline Julio J. Osuna's automotive repair dealer registration under Business and Professions Code section 9884.7, subdivision (a)(4).

Other Matters

10. The Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by a registrant, upon a finding that the registrant has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. (Bus. & Prof. Code, § 9884.7, subd. (c).) Julio Osuna, Jr., has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. (Factual Findings 12-17, 27, and Legal Conclusions 3-6.)

11. If the Bureau revokes a license, any additional license issued in the name of that licensee under chapter 5 of part 5 of division 26 of the Health and Safety Code may also be revoked. (Health & Saf. Code, § 44072.8.)

Determination of Discipline

12. The purpose of administrative proceedings regarding professional licenses is not to punish the applicant or licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.)

13. The Bureau has set forth factors to be considered in determining appropriate discipline in its Guidelines for Disciplinary Orders and Terms of Probation

(rev. June 2021). (Cal. Code Regs., tit. 16, § 3395.4.) The Guidelines provide that factors in aggravation include, but are not limited to, evidence that the unlawful act was of a pattern of practice, evidence of any other conduct which constitutes fraud, and prior history of formal disciplinary action. The Guidelines provide that factors in mitigation include, but are not limited to, absence of prior disciplinary action, evidence that the violation was not part of a pattern or practice, voluntary participation in retraining, voluntary purchase of proper diagnostic equipment and manuals, evidence of no loss to consumers and no damage to consumers' property, and evidence of substantial measures to correct business practices/operations to minimize the likelihood of recurrence.

RESPONDENT JULIO OSUNA, JR.

14. While there has not been prior disciplinary action against Julio Osuna, Jr., he was issued a citation on July 15, 2011, and was required to complete an eight-hour training course. Regarding the current accusation, over a period of approximately one year, there were six instances of clean plugging at Middlefield, all associated with his father's inspections. Julio Osuna, Jr., was well aware his father had little experience as a smog check inspector. He also knew his father had very limited skill using a computer for business matters, that he had significant problems with daily business records, and knew he was going to be working alone most of the time at Middlefield, a "high volume shop" likened to a "fire." Moreover, only after the accusation was filed against him did he investigate and implement some remedial measures at Middlefield. However, even with those remedial measures, he expressed that Middlefield would continue to be a "fire." Upon consideration of the record as a whole, protection of the public requires the outright revocation of his Middlefield automotive repair dealer registration and smog check station license.

15. In other matters, as discussed in Legal Conclusions 10 and 11, there is cause to discipline Julio Osuna, Jr's., automotive repair dealer registration and smog check station license for J & A Smog and Service as well as the smog check inspector and smog check repair technician licenses issued to him as an individual. Complainant is requesting a period of probation for that registration and those licenses. However, complainant has acknowledged that registration and those licenses have no prior discipline and no current allegations of misconduct. Upon consideration of the record as a whole, protection of the public does not require any discipline for that registration and those licenses.

RESPONDENT JULIO J. OSUNA

16. Over a period of approximately one year, Julio J. Osuna committed six instances of clean plugging at Middlefield. While he did not have any prior discipline related to his smog check inspector license, he did not provide sufficient evidence of mitigation or rehabilitation to demonstrate the likelihood of recurrence would be minimized. He argued in explaining the six instances of clean plugging, that customers "were pissed" off, Middlefield was a "high volume" shop, and that he "only" committed six instances of clean plugging while performing thousands of smog inspections. He further tried to justify and rationalize each of the six instances of clean plugging with increasingly implausible explanations largely based on business records that were replete with errors made by him. In addition, his inconsistent and, at times, incoherent, testimony further demonstrated his continued risk to public protection. Upon consideration of the record as a whole, protection of the public requires the outright revocation of his smog check inspector license and automotive repair dealer registration.

Costs

17. The Bureau is authorized to recover its reasonable costs of investigation and enforcement in disciplinary proceedings (Bus. & Prof. Code, § 125.3.) Complainant has reasonably incurred a total of \$10,885.73 in connection with this matter. (Factual Finding 28.)

18. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. The costs of investigation and enforcement were calculated regarding all the respondents named in the accusation and petition to revoke probation. None of these considerations support a reduction to the Bureau's cost recovery in this case.

Julio Osuna, Jr., and Julio J. Osuna shall be jointly and severely liable for the Bureau's reasonable costs in the amount of \$10,885.73.

ORDER

Respondent Julio Osuna, Jr.

1. Automotive Repair Dealer Registration No. ARD 263893 and Smog Check Station License No. TC 263893, issued to respondent Julio Osuna, Jr., owner, doing business as Middlefield Smog Check, are revoked.

2. Respondent Julio Osuna, Jr., shall, jointly and severally with respondent Julio J. Osuna, pay the Bureau of Automotive Repair \$10,885.73. for the reasonable costs and enforcement of Case No. 79/22-10578.

3. No disciplinary action is ordered for Automotive Repair Dealer Registration No. ARD 282539 and Smog Check Station License No. RC 282539, issued to respondent Julio Osuna, Jr., owner, doing business as J & A Smog and Service.

4. No disciplinary action is ordered against Smog Check Inspector License No. EO 632519 and Smog Check Repair Technician License No. EI 632519, issued to respondent Julio Osuna.

Respondent Julio J. Osuna

5. Smog Check Inspector License No. EO 642047, issued to respondent Julio J. Osuna, is revoked.

6. Automotive Repair Dealer Registration No. ARD 231634, issued to respondent Julio J. Osuna, owner, doing business as Osuna Auto Repair, is revoked.

7. Respondent Julio J. Osuna, shall, jointly and severally with respondent Julio Osuna, Jr., pay the Bureau of Automotive Repair \$10,885.73. for the reasonable costs and enforcement of Case No. 79/22-10578.

DATE: 09/29/2023

Carl D. Corbin

CARL D. CORBIN

Administrative Law Judge

Office of Administrative Hearings