

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

In the Matter of the First Amended Accusation Against:

**JOSE MANUEL ARRIAGA CABRERA d.b.a. MI CASITA SMOG
CHECK**

Automotive Repair Dealer No. ARD 303589

Smog check, Test-Only License No. TC 303589,

JOSE MANUEL ARRIAGA CABRERA

Smog Check Inspector License No. EO 644037,

JAVIER IGNACIO MENDEZ

Smog Check Inspector License No. EO 644213,

Respondents.

Agency Case No. 79/24-14130

OAH No. 2025081117

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on January 29, 2026, by videoconference.

Deputy Attorney General Theodore S. Dracar represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Attorney Stephen Allen, Esq., represented respondent Jose Manuel Arriaga Cabrera, who was present at the hearing.

The record was closed, and the matter was submitted for decision on January 29, 2026.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 25, 2022, the Bureau of Automotive Repair (bureau) issued Automotive Repair Dealer Registration No. ARD 303589 to respondent Jose Manuel Arriaga Cabrera doing business as Mi Casita Smog Check. The registration will expire on August 31, 2026, unless renewed.

2. On January 13, 2023, the bureau issued Smog Check, Test-Only License No. TC 303589 to respondent Jose Manuel Arriaga Cabrera doing business as Mi Casita Smog Check. The license will expire in January 2027, unless renewed.

3. On November 21, 2022, the bureau issued Smog Check Inspector License No. EO 644037 to respondent Jose Manuel Arriaga Cabrera. The license will expire in April 2027 unless renewed.

4. On June 2, 2025, complainant in his official capacity issued an accusation against respondents. The accusation sought to revoke respondents' licenses for conduct constituting fraud, making untrue and/or misleading statements; fraud; failing to comply with the inspection program; failure to comply with the regulations regarding the inspection program, dishonesty; and criminal convictions.

5. Respondent Mendez failed to file a notice of defense and a default decision and order effective October 25, 2025, was issued revoking his license. Respondent Arriaga Cabrera timely filed a notice of appeal, and this hearing followed against respondent Arriaga Cabrera only.

Smog Inspection Program

6. Beginning in March 2015, smog check inspections of most vehicles in California are performed pursuant to the BAR-OIS (Bureau of Automotive Repair On-Board Diagnostic Inspection System) protocol. Instructions for performing inspections are included in the Bureau's Smog Check Manual. At the beginning of each inspection, the technician enters his or her license number into the BAR-OIS computer system, as well as a password. Technicians are not permitted to share their passwords with others. As part of a BAR-OIS inspection, the on-board diagnostic system of the vehicle being tested is connected to the Bureau's database by means of a data acquisition device (DAD).

7. 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, which is the "language" used by the vehicle's computer. The protocol is programmed during the manufacturing process and does not change. Vehicles of the same make, model, and year will all use the same protocol. A PID (parameter identification) count is also transmitted during an OIS inspection. The PID count is the number of data points reported by the vehicle's computer. Each make, model, and year of vehicle will have an expected PID count (or range of PID counts.) When performing a smog inspection, the technician is required to confirm that the VIN input into the OIS system is correct and matches the vehicle being tested.

8. Clean plugging is the illegal practice of substituting one vehicle for another or using a device instead of the vehicle being inspected during the on-board diagnostic portion of a smog inspection. It can be detected when the data transmitted by the vehicle does not match what is expected to be transmitted for that year, make, and model of vehicle.

Clean Plugging

9. Steve Koch is a Program Representative I (PR) for the bureau. PR Koch has been employed by the bureau for 25 years. He has held smog check inspector and repair technician licenses since 1996. PR Koch is also an Automotive Service Excellence (ASE) certified master technician.

10. PR Koch explained that some of the parameters recorded when the DAD is plugged into a vehicle are engine speed in revolutions per minute (rpm), throttle position measured by a throttle position sensor (TPS), manifold absolute pressure

measured by a manifold air pressure sensor (MAP) measured by kilo pascals (kpa), and mass air flow measured by a mass air flow sensor (MAF) measured in grams per second (gps). A normal engine would transmit to the DAD a relatively steady engine speed. While idling, the TPS would remain steady at or near 0 percent. The MAP, and/or MAF readings would also remain steady. An increase in throttle, which increases the engine rpm, would also result in increases in the readings from MAF and a change in the readings for MAF.

11. PR Koch performed a review of data of smog inspections performed by respondent. PR Koch reviewed the following vehicle inspections performed by respondent:

- 2004 Honda Civic – On June 2, 2023, respondent issued a smog certificate to this vehicle. The data accumulated during the test showed that while the vehicle was idling, the engine speed was steady at 750 rpm, the throttle was fixed at 9.4 percent opening, and the MAP was fixed at 28 kpa. The engine speed is then increased to approximately 2000 rpm. The MAP and throttle opening did not change. This vehicle failed a prior inspection at a different station on May 10, 2023.
- 2004 Infiniti G35 – On June 14, 2023, respondent issued a smog certificate to this vehicle. The data accumulated during the test showed that while the vehicle was idling, the engine speed was steady at 675 rpm, the throttle was fixed at 0.0 percent opening, and the MAF was fixed at 7.72 gps. The engine speed is then increased to approximately 1250 rpm and then again to approximately 1650 rpm. The MAP and throttle opening did not change when the rpm increased.

- 2003 Lexus GS 300 – On September 1, 2023, respondent issued a smog certificate to this vehicle. The data accumulated during the test showed that while the vehicle was idling, the engine speed was steady at 775 rpm, the throttle was fixed at 13.7 percent opening, and the MAF was fixed at 4.43 gps. The engine speed is then increased to approximately 2475 rpm. The MAF and throttle opening did not change when the rpm increased.
- 2004 GMC Yukon – On October 4, 2023, respondent issued a smog certificate to this vehicle. The data accumulated during the test showed that while the vehicle was idling, the engine speed was steady at 550 rpm, the throttle was fixed at nine percent opening, the MAP was fixed at 34 kpa, and the MAF was fixed at 4.87 gps. The engine speed is then increased to approximately 1800 rpm. The MAP, MAF, and throttle opening did not change when the rpm increased.
- 2002 Chevrolet Avalanche – On December 5, 2023, respondent issued a smog certificate to this vehicle. The data accumulated during the test showed that while the vehicle was idling, the engine speed was steady at 650 rpm, the throttle was fixed at 15.7 percent opening, the MAP was fixed at 101 kpa, and the MAF was fixed at 0 gps. The engine speed is then increased to approximately 1450 rpm and then again to 1700 rpm. The MAP, MAF and throttle opening did not change when the rpm increased. This vehicle previously failed a smog inspection at another station on November 22, 2023, in Bakersfield, California. That inspection showed the MAP, MAF, and throttle opening all changed when the rpm increased.

12. While reviewing the data provided to the bureau regarding respondent's smog inspections, PR Koch stated that he found several hundred vehicles that showed

abnormal data. He chose the five specific instances above to document what he opined was respondent's clean plugging misconduct.

Conviction

13. On November 7, 2023, in the Superior Court of California, county of Riverside, respondent was convicted, on his guilty plea, of violating Penal Code sections 215, subdivision (a), taking a motor vehicle from a person by means of force and fear (carjacking) and 211, taking personal property from a person by means of force and fear (robbery), both felonies. Imposition of sentence was suspended, and respondent was placed on formal probation for a period of 24 months, with terms and conditions that included serving 364 days in the county jail.

14. Other than the fact that the conduct occurred on July 3, 2021, no other facts and circumstances underlying the convictions were established at hearing.

Respondent's Evidence

15. Respondent testified that he does not know why the MAP, MAF, and throttle openings did not change corresponding to the increase in rpm. He stated he had received no training about those data points. Respondent stated that he often logged in and allowed someone else to do the actual smog inspection. Respondent stated that he does not own a "dummy device." Respondent admitted his convictions but stated that he successfully completed criminal probation on December 7, 2025.

Costs

16. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$12,059.11. These costs reflect \$9,023.25 in enforcement costs, and \$3,035.86 in investigative costs. These

requests are supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. These costs are reasonable.

LEGAL CONCLUSIONS

1. The burden of proof in this proceeding is on complainant, 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.)

2. Business and Professions Code¹ section 9884.7, subdivision (a)(1), authorizes the director to suspend, revoke, or take other disciplinary action against the registration of an automotive repair dealer for making a written or oral statement 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, unless the automotive repair dealer can show there was a bona fide error. Respondent issued five smog certificates for vehicles that were clean plugged. Cause exists to impose discipline upon respondent's licenses pursuant to this section.

3. Section 9884.7, subdivision (a)(4), authorizes the director to suspend, revoke, or take other disciplinary action against the registration of an automotive repair dealer for engaging in conduct that constitutes fraud. Respondent issued five smog certificates for vehicles that were clean plugged. Cause exists to impose discipline upon respondent's licenses pursuant to this section.

¹ All subsequent statutory references are to the Business and Professions Code, unless otherwise noted.

4. Health and Safety Code sections 44702.2, subdivisions (a) and (c), authorize the bureau to discipline the license of a smog check inspector if the licensee violates the statutes and regulations governing the licensed activities. The five clean plugging incidents violated several statutes and regulations including: failing to ensure that the emission control tests were performed in accordance with prescribed procedures (Health & Saf. Code, § 44012), issuing a smog certificate without meeting the requirements of Health and Safety Code section 44012 (Health & Saf. Code, § 44015, subd. (b)), and failing to conduct the required smog tests and inspections on those vehicles in accordance with the Smog Check Manual (Cal. Code Regs., tit. 16, §§ 3340.42, & 3340.35, subd. (c)). Respondent issued five smog certificates for vehicles that were clean plugged. Cause exists to impose discipline upon respondent's licenses pursuant to this section.

5. Health and Safety Code section 44072.2, subdivision (d), authorizes the bureau to discipline a smog check inspector license if the licensee engages in fraudulent conduct. Issuing a certificate of compliance as a result of clean plugging is fraud. Respondent committed this act five times. Cause exists to impose discipline upon respondent's licenses pursuant to this section.

6. Section 490 and Health and Safety Code section 44072.2, subdivision (b), authorize the bureau to impose discipline against a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensee. Respondent was convicted of two serious felonies, carjacking and robbery. A crime is substantially related to the qualifications, functions, or duties of a licensee if it evidences present or potential unfitness of a licensee to perform licensed functions in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 3395.2.) Respondent used force or fear to take the property of another,

endangering the safety of that individual. Respondent's convictions are substantially related to the qualifications, functions, or duties of a licensee. Cause exists to impose discipline upon respondent's licenses pursuant to this section.

Evaluation

7. Having established cause for discipline against respondent, the issue is what level of discipline to impose. The bureau set forth factors to be considered when determining appropriate discipline in its Guidelines for Disciplinary Orders and Terms of Probation (rev. March 2016) (Guidelines). Pursuant to the Guidelines, aggravating factors to be considered are whether the unlawful act is part of a pattern of practice and whether there is evidence of conduct which constitutes fraud. A mitigating factor to be considered is whether there is an absence of prior disciplinary action. For violations of Health and Safety Code section 44072.2, subdivisions (a) and (c), the minimum recommended discipline is revocation stayed with a two-year term of probation. For violating Health and Safety Code section 44072.2, subdivision (d), the minimum recommended discipline is revocation stayed with a five-year term of probation. The maximum recommended discipline is revocation.

8. Over a six-month period, respondent clean plugged five vehicles. The fraudulent conduct occurred while respondent was facing charges for two serious felonies and continued while he was on criminal probation for those felonies. The conduct occurred within a year of respondent obtaining his licenses. The misconduct of respondent is significant and was part of a pattern of practice. Respondent has no other history of discipline.

9. Respondent provided no other mitigating or rehabilitative evidence. Respondent did not accept responsibility for his actions, claiming that someone else

did the inspections after he logged in using his credentials. Fully acknowledging the wrongfulness of one's actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent has not demonstrated a change in attitude, which of the many rehabilitation criteria is "arguably the most important in predicting future conduct." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

10. Given the circumstances above, public protection requires the revocation of respondent's licenses.

Costs

11. Business and Professions Code section 125.3 authorizes the bureau to recover its reasonable costs of investigation and enforcement in disciplinary proceedings. As set forth in Factual Finding 16, complainant has reasonably incurred \$12,059.11 in investigation and enforcement costs in connection with this matter.

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court established standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees are not deterred from exercising their right to an administrative hearing. Among those standards are whether or not the licensee was successful at hearing in getting the charges reduced or outright dismissed; 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. Given those standards there is nothing to support a reduction to the bureau's cost recovery in this case.

ORDER

1. Automotive Repair Dealer Registration No. ARD 303589 issued to respondent Jose Manuel Arriaga Cabrera, doing business as Mi Casita Smog Check, is revoked.
2. Smog Check Test-Only License No. TC303589 issued to respondent Jose Manuel Arriaga Cabrera, doing business as Mi Casita Smog Check, is revoked.
3. Smog Check Inspector License No. EO 644037 issued to Jose Manuel Arriaga Cabrera is revoked.
4. Respondent Jose Manuel Arriaga Cabrera shall pay the bureau \$12,059.11 for the reasonable costs of investigating and enforcing this case.

DATE: February 24, 2026



TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings