

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

In the Matter of the Accusation Against:

**HOLLISTER CHEVRON, INC., MAGGIE NGUYEN, PRESIDENT,
Automotive Repair Dealer Registration No. ARD 295075
Smog Check Station License No. RC 295075;**

and

**THUAN B. NGUYEN,
Smog Check Inspector License No. EO 136321
Smog Check Repair Technician License No. EI 136321,**

Respondents.

Agency Case No. 79/23-5990

OAH No. 2024090253

PROPOSED DECISION

Administrative Law Judge Carl D. Corbin, State of California, Office of Administrative Hearings, heard this matter on March 17 and 18, 2025, by videoconference.

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

Respondent Hollister Chevron, Inc. was represented by Maggie Nguyen, its President.

Respondent Thuan B. Nguyen was not represented and did not appear at hearing, having not filed a notice of defense.

The record closed and the matter was submitted for decision on March 18, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 7, 2019, the Bureau of Automotive Repair (Bureau or BAR) issued Automotive Repair Dealer Registration number ARD 295075 to respondent Hollister Chevron, Inc. (Hollister Chevron), a corporation. On August 23, 2019, the Bureau issued Smog Check Station License number RC 295075 to respondent Hollister Chevron. The registration and license were in full force and effect at all times relevant to the accusation and will expire on August 31, 2025, unless renewed. Maggie Nguyen is the President/Secretary/Treasurer of respondent Hollister Chevron.

2. On January 10, 2024, complainant Patrick Dorais issued the accusation in his official capacity as the Chief of the Bureau. Complainant alleges that on April 10, 2023, respondent Hollister Chevron issued a fraudulent smog check certificate of compliance through the fraudulent practice of "clean piping" after one of Hollister Chevron's respondent's smog technicians informed an undercover Bureau operative

that the presented undercover vehicle would not pass a smog inspection and offered to make "adjustments" for \$350 to ensure the vehicle would pass a smog inspection, and that these alleged facts constitute cause to discipline respondent Hollister Chevron's registration and license.

3. Respondent Hollister Chevron timely filed a notice of defense. Respondent Thuan B. Nguyen did not file a notice of defense. Accordingly, the hearing proceeded only against respondent Hollister Chevron (First through Fifth Causes for Discipline).

Smog Check Program

4. California's Smog Check Program (Program) requires that owners of most motor vehicles in the State subject their vehicles to and pass a smog check inspection and receive a certificate of compliance every two years when renewing their registration and when the vehicle's title is transferred. The purpose of the Program is to identify and correct vehicles that release excessive tailpipe emissions and pollutants in order to reduce air pollution and vehicle emissions to improve air quality. These inspections are performed by smog check inspectors at smog check stations, both of which are licensed by the Bureau. Smog inspections are conducted in accordance with the Bureau's January 2021 Smog Check Manual (Manual).

The smog check inspection in certain enhanced areas of the State is an Acceleration Simulation Mode test performed using an Emission Inspection System (EIS), also known as a BAR-97 EIS. The BAR-97 EIS is used for older vehicles (generally vehicles before model year 2000). This is a computer-based five-gas analyzer that measures hydrocarbons, carbon monoxide, oxides of nitrogen, carbon dioxide, and oxygen (five gases). The first part of the test is a loaded mode test of the vehicle's

tailpipe emissions on a dynamometer. This puts the vehicle's drive wheels on rollers and the vehicle is driven at speeds of fifteen and twenty-five miles per hour to simulate driving conditions while the emissions are sampled by the EIS.

In basic areas, or depending on a vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed Idle test is performed, but instead of applying a load to the vehicle's drive wheels with a dynamometer, the EIS measures the emissions of the five gases at idle as well as 2500 revolutions per minute.

As part of the smog inspection, the inspector also performs visual and functional tests on the vehicle as outlined in the Manual. The visual inspection of the emission control components verifies the required emission control devices, including a catalytic converter, are present and properly connected. Functional tests may also be performed on the vehicle.

A Smog Check Vehicle Inspection Report (VIR) is issued after a smog check inspection is completed, detailing the inspection results and whether the vehicle passed or failed the inspection. Vehicles that pass receive a certificate of compliance.

"Clean piping" is the act of using the emission sample of a known clean vehicle to substitute for the emissions of a vehicle that will not pass a smog inspection or is not present at the time of the test.

Consumer Complaint

5. On March 31, 2022, a consumer took her vehicle to respondent Hollister Chevron for a smog check inspection, her vehicle repeatedly failed the inspection, she ultimately paid \$500 for the inspection, and she was issued a certificate of compliance. On May 27, 2022, the consumer filed a complaint with the Bureau stating the smog

technician at respondent Hollister Chevron originally quoted her the amount of \$450 to ensure her vehicle passed inspection, but she was ultimately charged \$500. The Bureau investigated the consumer complaint. As part of the Bureau's investigation, on July 21, 2022, Program Representative II's Christopher Montoya and Michael Weaver conducted a station inspection at respondent Hollister Chevron and spoke with David Doan who identified himself as the manager. Doan is the husband of Maggie Nguyen. During the inspection, Montoya and Weaver identified various violations of the Automotive Repair Act (Act), and recommended respondent Hollister Chevron refund the consumer her payment of \$500. Doan agreed to refund the consumer, and respondent Hollister Chevron refunded the consumer by check dated July 21, 2022. The Bureau closed the consumer complaint on July 28, 2022.

Proactive Conference

6. On September 8, 2022, Maggie Nguyen and Doan met Montoya and Weaver at the Bureau's San Jose office to participate in a proactive conference. During the proactive conference Montoya and Weaver reviewed with Maggie Nguyen and Doan laws and regulations under the Act to ensure they and respondent Hollister Chevron understood that compliance with the Act was mandatory. During the proactive conference, Montoya and Weaver specifically discussed with Maggie Nguyen the requirements under the Act pertaining to estimates, invoices, and proper smog check inspections. Maggie Nguyen and Doan were advised that one of the purposes of the proactive conference was to impress upon them the seriousness of the Bureau's warnings and to ensure their voluntary compliance with the Act.

Clean Piping

7. As part of Weaver's official duties, he planned an undercover operation at respondent Hollister Chevron's smog check station to ensure the facility was complying with all aspects of the Act including those involving estimates, invoices, and proper smog check inspections. Weaver attempted to duplicate the set of facts set forth in Factual Finding 5 to confirm respondent Hollister Chevron was acting in accordance with the Act. Weaver requested a 1995 Honda Civic (Civic) from a Bureau facility that would fail the visual and emissions test portions of a smog check inspection. Program Representative II Michael Roberts fulfilled Weaver's request by first ensuring the Civic would pass the visual and emissions test portions of a smog check inspection. Then Roberts made modifications to the Civic, including removing the vehicle's catalytic converter and replacing it with a straight exhaust pipe and removing the factory air intake system and replacing it with an aftermarket air intake system. After Roberts made the modifications to the Civic, he conducted another smog check inspection, and the Civic failed the visual test portion and emissions test portions of the smog check inspection. The emissions failure of the Civic caused it to exceed "gross polluter" standards. Roberts detailed his actions in documenting the Civic in a written declaration that included photographs. Roberts testified at hearing in a methodical and detailed manner. Roberts persuasively testified that the Civic could not pass a smog check inspection except through some fraudulent means such as clean piping.

8. On March 27, 2023, after Roberts completed the documentation of the Civic set forth in Factual Finding 7, the vehicle was transported to San Jose and secured by Weaver at an undisclosed location.

9. On April 10, 2023, Weaver verified the modifications made by Roberts to the Civic, set forth in Factual Finding 7, were still present and he documented the condition of the vehicle in a written declaration that included photographs.

10. Later in the day on April 10, 2023, Weaver instructed Program Representative I Christian Jimenez to drive the Civic to Hollister Chevron to request a smog check inspection. Jimenez drove the Civic to Hollister Chevron and, under an assumed name, he requested a smog check inspection from smog technician Thuan Nguyen. Thuan Nguyen did not provide Jimenez with a written estimate for the smog check inspection, but instead directed Jimenez to pull the Civic into a service bay. Thuan Nguyen inserted a smog machine emissions sample hose into the tailpipe of the Civic, took a sample, and then informed Jimenez that the Civic's emission's readings were high, and the vehicle would not pass a smog check inspection. Thuan Nguyen made an offer to Jimenez that for \$350, paid in cash, the technician would make "adjustments" to the Civic to ensure the vehicle passed the inspection. Jimenez agreed to pay \$350 in cash, he saw the technician insert a smog machine emissions sample hose into the tailpipe of a different vehicle (not the Civic), and he left to wait in the facility waiting room. The technician later returned and informed Jimenez the vehicle had passed inspection. Jimenez gave Thuan Nguyen \$360 in twenty-dollar bills, and the technician returned \$20 to Jimenez stating to the effect that twenty dollars was a "tip," so Jimenez only paid a total of \$340. Thuan Nguyen provided Jimenez with a VIR (that contained a certificate of compliance) that stated the Civic passed the smog check inspection, despite the fact that the vehicle could not pass an inspection as set forth in Factual Finding 7. Thuan Nguyen was listed on the VIR as the smog check technician that completed the inspection of the Civic, and he signed the VIR. Neither Thuan Nguyen nor anyone else at respondent Hollister Chevron provided Jimenez with any other written document besides the VIR.

11. After leaving Hollister Chevron, Jimenez returned the Civic to Weaver at the same undisclosed location. That same day, Weaver verified the modifications made by Roberts to the Civic, set forth in Factual Finding 7, were still present and he documented the condition of the vehicle in a written declaration that included photographs.

12. On April 18, 2023, Roberts received custody of the Civic from Weaver, and on April 19, 2023, Roberts verified the modifications he made to the Civic, set forth in Factual Finding 7, were still present and he documented the condition of the vehicle in a written declaration that included photographs.

Discipline Considerations

13. Effective June 17, 2019, by Order from the Director of the Department of Consumer Affairs (Director), Doan's smog check inspector and smog check repair technician licenses were revoked based on various violations of the Act, including multiple instances of "clean plugging,"¹ committed at a previous business located at the same location as respondent Hollister Chevron.

14. As set forth in Factual Finding 6, a proactive conference was held on September 8, 2022, with Maggie Nguyen and Doan.

¹ 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.

Respondent's Evidence

15. Maggie Nguyen testified at hearing in an incomplete manner that minimized her knowledge, understanding, and role in the business of respondent Hollister Chevron. While she acknowledged being married to Doan and was aware that his smog check inspector and smog check repair technician licenses were revoked, she denied that Doan was the manager or had any authority at respondent Hollister Chevron and insisted that he only worked in the convenience retail store at the same location as respondent Hollister Chevron. Notwithstanding Doan representing himself as the manager of respondent Hollister Chevron associated with the consumer complaint set forth in Factual Finding 5, his appearing at the proactive conference as set forth in Factual Finding 6, and his being listed as the only manager in the Bureau's BAR-97 EIS software for respondent Hollister Chevron, Maggie Nguyen testified that she has been the manager for respondent Hollister Chevron since Doan's licenses were revoked in 2019, she "did not allow him to do anything" for respondent Hollister Chevron, and she has hired two new smog technicians to "take care of" respondent Hollister Chevron. Maggie Nguyen's testimony on Doan's involvement and control of respondent Hollister Chevron was not credible.

16. Maggie Nguyen testified that after she received the accusation in this matter, Thuan Nguyen "confessed to" her that he had "done a wrong thing behind her back," but then she continued to allow him to work for respondent Hollister Chevron until November 2024 when he resigned after his licenses were revoked. Maggie Nguyen also claimed that respondent Hollister Chevron in fact provided Jimenez with a written estimate and invoice on April 10, 2023, but that testimony was not credible.

17. Maggie Nguyen testified that in April 2023 she was not very involved in the managing of respondent Hollister Chevron as she was caring for her ill mother,

who is now deceased. She testified that she supports three children, and she would like respondent Hollister Chevron to keep its registration and license.

Ultimate Factual Findings

18. The evidence established that respondent Hollister Chevron issued a fraudulent VIR and certificate of compliance that contained untrue or misleading statements for a vehicle that could not pass a smog check inspection except through a fraudulent method such as clean piping, which was in fact used in the smog check inspection, as set forth in Factual Findings 7 through 12. The issuance of this fraudulent VIR and certificate of compliance was not a bona fide error and caused injury to the people of California in the form of reduced protection by the Program and potentially increased harmful emissions. The evidence further established Jimenez made a cash payment for the inspection, but no written estimate or invoice was provided as set forth in Factual Findings 10 and 16. With the exercise of reasonable care and supervision, Maggie Nguyen should have known the vehicle purportedly being tested was not actually tested and that it could not have passed the smog check inspection.

Costs

19. The Bureau has incurred \$3,446.80 in investigation costs and \$7,993.75 in enforcement costs, for a total of \$11,440.55, 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. 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 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.)

Causes for Discipline²

FIRST CAUSE FOR DISCIPLINE: UNTRUE OR MISLEADING STATEMENTS

2. The Director may discipline an automotive repair dealership 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 its undercover vehicle had been properly inspected and by certifying this vehicle was in compliance, respondent Hollister Chevron made untrue or misleading statements, which with the exercise of reasonable care it should have known were untrue, and those statements were not the result of bona fide error. (Factual Finding 18.) Cause exists to discipline respondent Hollister Chevron's

² As set forth in Factual Finding 3, the hearing proceeded only against respondent Hollister Chevron, on the First through Fifth Causes for Discipline.

automotive repair dealership registration under Business and Professions Code section 9884.7, subdivision (a)(1).

SECOND CAUSE FOR DISCIPLINE: FRAUD

3. The Director may discipline an automotive repair dealership registration for conduct that constitutes fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) The issuance of a false certificate of compliance by respondent Hollister Chevron was fraudulent and not the result of a bona fide error. (Factual Finding 18.) Cause exists to discipline respondent Hollister Chevron's automotive repair dealership registration under Business and Professions Code section 9884.7, subdivision (a)(4).

THIRD CAUSE FOR DISCIPLINE: VIOLATION OF LAWS AND REGULATIONS

4. The Director may discipline an automotive repair dealership registration for failure in any material respect to comply with the provisions of the Act or its adopted regulations. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) The fraudulent smog check inspection of the Bureau's undercover vehicle by respondent Hollister Chevron (Factual Finding 18) violated numerous statutes and regulations under the Act, including: Business and Professions Code section 9884.8 (failed to provide a written invoice for the smog check inspection); Business and Professions Code section 9884.9, subdivision (a) (failed to provide a written estimate for the smog check inspection); California Code of Regulations, title 16, section 3356 (failed to provide a written invoice for the smog check inspection); California Code of Regulations, title 16, section 3371 (made false or misleading statements associated with the smog check inspection); and California Code of Regulations, title 16, section 3373 (made false or misleading statements on a VIR). Cause exists to discipline respondent Hollister Chevron's automotive repair dealership registration under Business and Professions

Code section 9884.7, subdivision (a)(6), for violations of the Act and its implementing regulations.

FOURTH CAUSE FOR DISCIPLINE: DISHONESTY, FRAUD, OR DECEIT

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 a false certificate of compliance by respondent Hollister Chevron 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 Finding 18.) Cause exists to discipline respondent Hollister Chevron's smog check station license under Health and Safety Code sections 44072.10, and 44072.2, subdivision (d).

FIFTH CAUSE FOR DISCIPLINE: FAILURE TO COMPLY WITH MOTOR VEHICLE INSPECTION PROGRAM

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, § 44000 et seq.) or associated regulations when conducting smog inspections. (Health & Saf. Code, §§ 44072.10, 44072.2, subds. (a) & (c).) The fraudulent smog check inspection of the Bureau's undercover vehicle by respondent Hollister Chevron (Factual Finding 18) violated numerous statutes and regulations, including: Health and Safety Code section 44012 (failed to completely and appropriately perform emission control tests for a vehicle issued a certificate of compliance); Health and Safety Code section 44032 (failed to completely and appropriately inspect a vehicle issued a certificate of compliance); Health and Safety Code section 44059 (willfully made false statements on a VIR stating the vehicle was inspected and passed

inspection); California Code of Regulations, title 16, section 3340.24, subdivision (c) (falsely or fraudulently issued a certificate of compliance); California Code of Regulations, title 16, section 3340.30, subdivision (a) (failed to test a vehicle in accordance with Bureau procedures); California Code of Regulations, title 16, section 3340.41, subdivision (c) (entered false information into the BAR-97 EIS for the vehicle being tested); California Code of Regulations, title 16, section 3340.42, (failed to perform a smog test and inspection on a vehicle in accordance with Bureau procedures); and California Code of Regulations, title 16, section 3340.45 (failed to conduct inspection in accordance with the Manual by entering false information for the vehicle being tested). Cause exists to discipline respondent Hollister Chevron's smog check station license under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c).

Other Matters

7. 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).) Respondent Chevron Hollister has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. (Factual Finding 18, and Legal Conclusions 2-6.)

8. 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

9. 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.)

10. 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, prior warnings from the Bureau, evidence that the unlawful act was part 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 of 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.

11. Respondent Hollister Chevron does not have a history of formal disciplinary action, but a consumer complaint was filed against the entity which identified various violations of the Act and resulted in the Bureau's recommendation that respondent Hollister Chevron refund the consumer in full. Following the consumer complaint, the Bureau convened a proactive conference with Maggie Nguyen and Doan, on behalf of respondent Hollister Chevron, to impress upon them the seriousness of the Bureau's warnings and to ensure their voluntary compliance. Most troubling, Maggie Nguyen's repeated denials that Doan, her husband whose licenses

were revoked in 2019 for clean plugging, had any involvement with respondent Hollister Chevron, were simply not credible and were directly contradicted by the evidence. Moreover, respondent Hollister Chevron continued to allow smog check technician Thuan B. Nguyen, despite his admission of wrongdoing, to conduct smog inspections until his licenses were revoked with no evidence of any additional training being provided to him or any additional safeguards being implemented. Lastly, scant mitigation evidence was presented by respondent Hollister Chevron. Protection of the public demands the revocation of respondent Hollister Chevron's automotive repair dealer registration and smog check station license.

Costs

12. 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 \$11,440.55 in connection with this matter. (Factual Finding 19.)

13. 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. None of these considerations support a reduction to the Bureau's cost recovery in this matter.

ORDER

1. Automotive Repair Dealer Registration number ARD 295075, issued to Hollister Chevron, Inc., Maggie Nguyen, President, is revoked.
2. Smog Check Station License number RC 295075, issued to Hollister Chevron, Inc., Maggie Nguyen, President, is revoked.
3. Any other automotive repair dealer registration issued to Hollister Chevron, Inc., Maggie Nguyen, President, is revoked.
4. Any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Hollister Chevron, Inc., Maggie Nguyen, President, is revoked.
5. Hollister Chevron, Inc., Maggie Nguyen President, shall pay the Bureau of Automotive Repair \$11,440.55 for the reasonable costs of investigation and enforcement of case number 79/23-5990.

DATE: **04/01/2025**

Signed Copy on File
CARL D. CORBIN
Administrative Law Judge
Office of Administrative Hearings