

**BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF CONSUMER AFFAIRS**

**BUREAU OF AUTOMOTIVE REPAIR**

**STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**STANISLAUS SMOG 2, INC. dba STANISLAUS SMOG #2, JOSE G. VARGAS,**

**PRESIDENT**

3531 Carver Road

Modesto, CA 95356

Automotive Repair Dealer Registration No. ARD 274734

Smog Check Test Only Station License No. TC 274734

and

**JOSE VARGAS**

775 Adams Avenue

Orange Cove, CA 93646

Smog Check Inspector License No. EO 642792

Respondents.

Case No. 79/24-12392

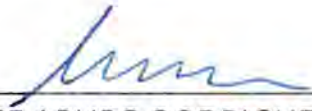
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DECISION

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 April 22, 2026.

IT IS SO ORDERED March 4, 2026.



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

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**In the Matter of the Accusation Against:**

**STANISLAUS SMOG 2 INC., dba STANISLAUS SMOG #2, and  
JOSE VARGAS, Respondents**

**Agency Case No. 79/24-12392**

**OAH No. 2025050844**

**PROPOSED DECISION**

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 5, 2026, from Sacramento, California.

Megan M. Bright, Deputy Attorney General, represented complainant Patrick Dorais (complainant), Chief, Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

William D. Ferreira, Esq., represented respondents Stanislaus Smog 2 Inc., doing business as (dba) Stanislaus Smog #2 (Stanislaus Smog), and Jose Vargas (Vargas). Vargas, also known as Jose Guadalupe Vargas Nava, also appeared, both in his individual capacity and as president of Stanislaus Smog.

Evidence was received, and the record was held open for the parties to submit written briefs. The parties timely submitted their briefs. The record was closed and the matter submitted for decision on January 30, 2026.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On November 8, 2013, the Bureau issued Automotive Repair Dealer Registration No. ARD 274734 (registration) to Stanislaus Smog, with Jose G. Vargas as its owner. The registration was canceled on August 12, 2024. The Bureau retains jurisdiction over a canceled registration or license. (Bus. & Prof. Code, §§ 118, subd. (b), & 9889.7.)

2. On November 20, 2013, the Bureau issued Smog Check, Test-Only, Station License No. TC 274734 (station license) to Stanislaus Smog. The station license was canceled on August 12, 2024.

3. On December 2, 2020, the Bureau issued Vargas in his individual capacity Smog Check Inspector License No. EO 642792 (inspector license). The inspector license will expire on July 31, 2026, unless renewed.

4. On April 17, 2025, complainant, in his official capacity, signed and thereafter filed an Accusation seeking to discipline respondents' respective registration, station license, and inspector license. Generally, the Accusation alleges respondents engaged in "clean plugging" five vehicles between April and July 2024. "Clean plugging" is the use of one vehicle to generate passing diagnostic readings for the purpose of issuing a smog certificate of compliance to another vehicle that would

not otherwise pass a smog check. The Accusation also alleges that Vargas failed to complete remedial training as required by a previous citation.

5. Respondents timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing before an ALJ of the OAH pursuant to Government Code section 11500 et seq.

### **Previous Discipline**

6. On September 16, 2022, the Bureau issued Citation No. C2022-1047 against Stanislaus Smog's registration and station license for issuing a certificate of compliance to an undercover vehicle with missing or modified Air Injection System (AIS) components, in violation of Health and Safety Code section 44012. The citation included an order of abatement requiring Stanislaus Smog to pay \$1,000. Stanislaus Smog paid \$1,000 on October 21, 2022.

7. On September 16, 2022, the Bureau issued Citation No. M2022-1048 against Vargas's inspector license for issuing a certificate of compliance to an undercover vehicle with missing or modified AIS components, in violation of Health and Safety Code section 44032. The citation included an order of abatement requiring Vargas to complete an eight-hour BAR-certified smog check citation training course by November 15, 2022. Vargas did not submit proof of completion. The Bureau sent Vargas a "failure to comply" letter in May 2023. Compliance with the order of abatement is outstanding.

### **Allegedly "Clean Plugged" Vehicles**

8. Jose Perez (Perez) testified. He has been an Automotive Program Representative for the Bureau for approximately a year. His job duties include

conducting investigations, analyzing data, collecting evidence, and writing reports. Previously, he was a Program Representative II for the Bureau for seven years. Prior to joining the Bureau, Perez was a smog repair technician, lamp adjuster, and brake adjuster for 16 years.

9. Perez explained the smog inspection process. An inspector utilizes an On-Board Inspection System (OIS) which uses a Data Acquisition Device (DAD). The DAD is an instrument that connects the OIS to a vehicle's On-Board Diagnostic (OBD) system to retrieve diagnostic data. Once connected, the DAD retrieves an electronic Vehicle Identification Number (eVIN) from the OBD. The eVIN is preprogrammed into the OBD and cannot be changed. The eVIN should match the physical Vehicle Identification Number (VIN) on the vehicle.

During the inspection, the DAD prompts the user to connect it to the subject vehicle, confirm that it is connected, and begin the diagnostic testing. Upon each prompt, the user must respond. The prompts help ensure the user does not miss any steps during the testing process. At the conclusion of the inspection, the data received from the OBD and the inspection results are recorded and transmitted to the Bureau's database.

10. Upon reviewing its database in 2024, the Bureau noticed inconsistent data with respect to 11 vehicles inspected and certified by Vargas at Stanislaus Smog. On July 24, 2024, Perez visited Stanislaus Smog and "questioned [Vargas] about 11 vehicles he had certified illegally." Perez wrote a Station Inspection Report memorializing his visit. He testified consistently with the Station Inspection Report. According to Perez, Vargas admitted he certified 11 vehicles as passing smog inspections "because he needed money." Perez explained at hearing that the Bureau made an administrative decision to pursue only 5 of the 11 vehicles initially identified.

11. Perez reviewed the Bureau's database and records with respect to the five vehicles the Bureau decided to pursue. He wrote an Investigation Report summarizing his findings. Perez testified consistently with his report.

### **VEHICLE 1 – 2010 HONDA ACCORD LX**

12. Vehicle 1 is a 2010 Honda Accord LX. Its Vehicle Identification Number (VIN) is 1HGCS1B35AA020228. On April 9, 2024, Vargas inspected this vehicle. The OIS test details from the inspection show Vargas scanned the vehicle's VIN, which matched the eVIN. Vargas was unable to complete the inspection because Vehicle 1's catalyst monitor's status was not ready, and the vehicle needed to run self-diagnostics for all of its monitors to be ready. Approximately an hour and a half later, Vehicle 1 was taken to a different smog check station and successfully passed smog inspection. A smog certificate of compliance was issued to Vehicle 1.

13. Ten days later, Vehicle 1 returned. Vargas inspected Vehicle 1 again. The OIS test details show the reason for the smog check was a change in ownership. Vargas manually entered Vehicle 1's VIN correctly. However, the DAD captured OBD data showing an eVIN of WVWBW8AHXDV004494. Vargas issued a smog certificate of compliance for Vehicle 1.

14. Twenty-four seconds after completing the smog check of Vehicle 1, Vargas inspected a 2013 Volkswagen EOS Komfort. Its VIN is WVWBW8AHXDV004494, which matched the eVIN. This vehicle passed inspection. Based on the OIS test details, the 2013 Volkswagen EOS Komfort was connected to the DAD when Vargas performed the smog check of Vehicle 1.

## **VEHICLE 2 – 2013 FORD EXPLORER XLT**

15. Vehicle 2 is a 2013 Ford Explorer XLT. Its VIN is 1FM5K8D8XDGC49493. On May 23, 2024, Vargas inspected Vehicle 2. He manually entered Vehicle 2's VIN correctly. However, the DAD captured OBD data showing an eVIN of JA4AT3AA5KZ031385. Vargas issued a smog certificate of compliance for Vehicle 2.

16. Ten seconds prior to inspecting Vehicle 2, Vargas completed inspection of a 2019 Mitsubishi Eclipse Cross ES. Its VIN is JA4AT3AA5KZ031385, which matched the eVIN. This vehicle passed inspection. Based on the OIS test details, the 2019 Mitsubishi Eclipse Cross ES was connected to the DAD when Vargas performed the smog check of Vehicle 2.

## **VEHICLE 3 – 2016 FORD MUSTANG GT**

17. Vehicle 3 is a 2016 Ford Mustang GT. Its VIN is 1FA6P8CF4G5261297. On June 18, 2024, Vargas inspected Vehicle 3. Vargas manually entered Vehicle 3's VIN correctly. However, the DAD captured OBD data showing an eVIN of 2CNALDEC5B6470035. Vargas issued a smog certificate of compliance for Vehicle 3.

18. Approximately 10 minutes and 46 seconds prior to inspecting Vehicle 3, Vargas completed inspection of a 2011 Chevrolet Equinox LT. Its VIN is 2CNALDEC5B6470035. Vargas scanned the vehicle's VIN, which matched the eVIN. This vehicle passed inspection. Based on the OIS test details, the 2011 Chevrolet Equinox LT was connected to the DAD when Vargas performed the smog check of Vehicle 3.

## **VEHICLE 4 – 2014 HONDA ACCORD LX-S**

19. Vehicle 4 is a 2014 Honda Accord LX-S. Its VIN is 1HGCT1B39EA016976. On June 25, 2024, Vargas inspected Vehicle 4. Vargas manually entered Vehicle 4's VIN

correctly. However, the DAD captured OBD data showing an eVIN of 1HGCT1B39EA016976. Vargas issued a smog certificate of compliance for Vehicle 4.

20. Five seconds after completing the smog check of Vehicle 4, Vargas inspected a 2014 Honda Accord LX-S. Its VIN is 1HGCT1B39EA016976. Vargas scanned the vehicle's VIN, which matched the eVIN. This vehicle passed inspection. Based on the OIS test details, the 2014 Honda Accord LX-S was connected to the DAD when Vargas performed the smog check of Vehicle 4.

### **VEHICLE 5 – 2005 FORD MUSTANG GT**

21. Vehicle 5 is a 2005 Ford Mustang GT. Its VIN is 1ZVFT85H555234026. On July 2, 2024, Vargas inspected Vehicle 5. Vargas manually entered Vehicle 5's VIN correctly. However, the DAD captured OBD data showing an eVIN of 3GNFK16T41G179322. Vargas issued a smog certificate of compliance for Vehicle 5.

22. Nine seconds prior to inspecting Vehicle 5, Vargas completed inspection of a 2001 Chevrolet Suburban K1500. Its VIN is 3GNFK16T41G179322, which matched the eVIN. This vehicle passed inspection. Based on the OIS test details, the 2001 Chevrolet Suburban K1500 was connected to the DAD when Vargas performed the smog check of Vehicle 5.

### **Respondent's Evidence**

23. Vargas testified. He was first an employee of Stanislaus Smog before he ultimately bought the business from the then-owner in 2021 or 2022. Vargas operated Stanislaus Smog by himself. At the same location as Stanislaus Smog, Vargas also operated as a DMV registration service provider, which allowed him to process

vehicle-related transactions such as registration and titling. He had no employees for either business.

24. Vargas was in a serious car accident in December 2023 and was prescribed opioids for pain management. While on these medications, he found himself unable to think clearly. However, he continued to work to support himself and his wife, who became pregnant with their first child soon after the accident. Vargas and his wife lived in Orange Cove, California, two to three hours away from Modesto, California where Stanislaus Smog was located. He traveled back and forth each day, six days a week. On a given day, Vargas completed 30 to 35 smog inspections. He could fit up to two vehicles at a time in the garage bay, and he frequently had a few cars in line outside. Prior to and during the inspections of Vehicles 1 through 5, Vargas was using a wireless DAD that used a Bluetooth connection, but it was "giving [him] trouble." He eventually switched to a DAD that required a wired connection.

25. Vargas did not dispute the mismatched VINs on the OIS test details for Vehicles 1 through 5. However, he denies the mismatch is due to fraud, but rather carelessness. He believes he must have accidentally left the device connected to the wrong vehicle during his inspections of Vehicles 1 through 5. For each of these inspections, Vargas does not dispute that he affirmatively responded to the prompts in the DAD to connect the vehicle, ensure the correct vehicle is connected, and begin the test. He attributes his failure to properly multitask to working quickly to juggle 30 to 35 inspections each day, along with processing other vehicles as part of his DMV registration service, and to cloudy thinking due to the pain medications.

26. Soon after Perez visited Stanislaus Smog and identified the discrepancies in the OIS test details, Vargas discontinued the use of opioid medications so he can think clearly again. He also improved his smog check practice by "taking [his] time"

and “checking everything” instead of rushing. However, he ultimately sold the Stanislaus Smog in August 2024 so he could focus on finding employment nearer his wife and child. He intermittently worked as a smog inspector at Stanislaus Smog until November 2024, for the sole purpose of helping the new owner acclimate to the business. Vargas has not performed any smog inspections since.

27. Vargas does not dispute that he did not complete the course required by the order of abatement relating to Citation No. M2022-1048. Nevertheless, he asks the Bureau to allow him to maintain his inspector license. He would like to again own a smog station in the future.

## **Analysis**

### **ALLEGATIONS**

28. It is undisputed that a different vehicle was connected to the DAD when Vargas completed the smog inspections of Vehicles 1 through 5 at Stanislaus Smog. It is undisputed that Vargas responded affirmatively to the prompts in the DAD to connect the vehicle, ensure the correct vehicle was connected, and to begin each test. As a result of connecting the wrong vehicles during the tests for Vehicles 1 through 5, respondents issued a smog certificate of compliance for each of these vehicles. That the wrong vehicles were connected to the DAD when Vargas inspected Vehicles 1 through 5 does not, by itself, establish fraud. However, Vargas’s affirmative responses to the DAD’s prompts and the respondents certifying, under penalty of perjury, that Vehicles 1 through 5 passed the smog inspection constitute fraudulent acts.

29. Vargas contends he was being careless in his practice due to high volume of customers, operating two businesses at the same location, and the effects of pain medication. However, if respondents had exercised reasonable care—as they are

required to do—they should have known that the testing and certifications were flawed. Because they issued certificates of compliance for Vehicles 1 through 5 without ensuring that the tests were performed in accordance with governing statutes and the Bureau’s procedures, the evidence establishes that they violated the Motor Vehicle Inspection Program (Health and Safety Code section 44000 et seq.) Relatedly, the evidence also establishes that respondents failed to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a), 3340.35, subdivision (c), 3340.42, which govern how to properly certify vehicles for compliance. Additionally, the evidence also shows respondents engaged in a course of repeated and willful violations of the Motor Vehicle Inspection Program and related regulations. Further, it is undisputed that Vargas, in his individual capacity, failed to complete the course required by the order of abatement issued in Citation No. M2022-1048.

### **APPROPRIATE DISCIPLINE**

30. Pursuant to California Code of Regulations, title 16, section 3395, the Bureau has adopted criteria to determine whether a licensee has sufficiently rehabilitated such that they are able to engage in licensed activities in a manner consistent with the public health, safety, and welfare. The relevant criteria are: (1) the nature and gravity of the misconduct; (2) the time elapsed since the misconduct; and (3) compliance or noncompliance with sanctions lawfully imposed; and (4) evidence of rehabilitation.

31. Here, respondents’ failure to test and certify carefully and their fraudulent certifications, under penalty of perjury, that Vehicles 1 through 5 passed the smog inspections are recent and serious. The Motor Vehicle Inspection Program and its requirements are a safeguard to ensure smog inspectors are performing their duties appropriately for the health, safety, and welfare of consumers and the environment.

Respondents' carelessness put the public at risk. Further, respondents were each previously issued one citation, and Vargas failed to complete the required retraining the Bureau ordered in Citation No. M2022-1048.

32. Vargas contends his carelessness is due to a high volume of customers, operating two businesses at the same location, and the effects of pain medication. To his credit, he discontinued his pain medication so he can think more clearly, and he changed his practice by "taking [his] time" and "checking everything" to prevent recurrence of smog testing the wrong vehicles.

33. To determine appropriate discipline, the Bureau set forth disciplinary guidelines. (Cal. Code Regs., tit. 16, § 3395.4; see Guidelines for Disciplinary Orders and Terms of Probation (rev. June 2021) (Guidelines).) The Guidelines recommend the following penalties, in pertinent part:

- For making an untrue statement, which by the exercise of reasonable care should be known to be untrue, (i.e., violation of Business and Professions Code section 9884.7, subdivision (a)(1)), the Guidelines recommend a penalty of revocation stayed for three years of probation with appropriate terms and conditions.
- For fraudulent conduct (i.e., violation of Business and Professions Code section 9884.7, subdivision (a)(4)), the Guidelines recommend a penalty of revocation stayed for five years with appropriate terms and conditions.
- For a violation of the Motor Vehicle Inspection Program's regulations (i.e., violation of Health and Safety Code sections 44072.2, subdivision (c)), the Guidelines recommend a penalty of revocation stayed for two years of probation with appropriate terms and conditions.

- For a violation of the provisions of the Motor Vehicle Inspection Program relating to the particular activity for which respondents are licensed (i.e., violation of Health and Safety Code section 44072.2, subdivision (h)), the Guidelines recommend a penalty of a revocation stayed for two years of probation with appropriate terms and conditions.

- For a failure to complete a training or course as ordered by the Bureau (i.e. violation of Health and Safety Code 44045.6, subdivision (c)), the Guidelines have no recommendation.

34. The objective of license discipline is to protect the public, not punish a licensee. (See *Fahmy v. Medical Bd. of Cal.* (1995) 38 Cal.App.4th 810, 817.) When all the evidence is considered, along with the factors in aggravation and mitigation, revocation is not warranted. Five years on probation, with relevant terms and conditions, are appropriate. Retraining and Bureau monitoring will ensure that respondents properly test and accurately certify vehicles in a manner consistent with the public health, safety, and welfare.

## **Costs**

35. Pursuant to Business and Professions Code section 125.3, a respondent found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and enforcement of a case. As of the hearing date, the Bureau incurred investigation costs totaling \$4,539.36 and enforcement costs totaling \$5,116.50. In support of these amounts, complainant submitted, respectively, a declaration by Perez with a spreadsheet showing the investigative activity performed and the time spent, and a certification of costs, including a summary of tasks performed, the total hours spent, and the amount billed by the Office of the Attorney General.

## LEGAL CONCLUSIONS

### Burden and Standard of Proof

1. Complainant has the burden to prove the allegations in the Accusation by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App. 911, 916–917.) This evidentiary standard requires complainant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, complainant need only prove it is more likely than not that respondents engaged in the conduct alleged. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

### Applicable Law

2. Business and Professions Code section 9884.7 provides in pertinent part:

(a) The director, if 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.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(e) For purposes of this section, "fraud" includes, but is not limited to, violations of this chapter involving misrepresentations and all of the following:

[¶] . . . [¶]

(2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.

3. Health and Safety Code section 44045.6, subdivision (c), provides:

(c) The department may require remedial training at a certified training facility or may take disciplinary action,

whichever the department determines to be the most appropriate, for any licensed technician who the department determines cannot perform inspections, testing, or repairs as required under the program. The failure to complete the remedial training when required by the department shall be a ground for revocation or suspension of a smog check technician's license under Section 44072.2.

4. Health and Safety Code section 44072.2 provides, in pertinent part:

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.

[1] . . . [1]

(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.

[1] . . . [1]

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

5. Health and Safety Code section 44072.10, subdivision (c)(4), provides:

(c) 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.

[¶] . . . [¶]

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

6. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, 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.

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

(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. The following conditions shall apply:

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

8. California Code of Regulations, title 16, section 3340.42 prescribes the testing methods, the types of inspections, and gross polluter standards with respect to smog inspections.

## **Causes for Discipline**

### **COUNT ONE**

9. Stanislaus Smog should have known, in the exercise of reasonable care, that its testing was inaccurate and flawed and thus resulted in making untrue certifications. When all the evidence is considered, as discussed above, cause exists to discipline Stanislaus Smog's registration and station license under Business and Professions Code section 9884.7, subdivision (a)(1).

### **COUNT TWO**

10. Stanislaus Smog engaged in fraud in its testing and certification of Vehicles 1 through 5. When all the evidence is considered, as discussed above, cause exists to discipline Stanislaus Smog's registration and station license under Business and Professions Code section 9884.7, subdivision (a)(4).

### **COUNT THREE**

11. Complainant alleges cause for discipline under Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, based on Stanislaus Smog's alleged failure to ensure that testing and inspections were "in accordance with the procedures prescribed by the department [*s/c*]." However, the legal bases alleged do not relate to following procedures in the testing or inspection of vehicles. Therefore, cause does not exist to discipline Stanislaus Smog's registration and station license under Health and Safety Code section 44072.2, subdivision (a), or 44072.10.

#### **COUNT FOUR**

12. In conducting inaccurate testing and certification, Stanislaus Smog violated the governing regulations under the Motor Vehicle Inspection Program. When all the evidence is considered, as discussed above, cause exists to discipline Stanislaus Smog's registration and station license under Health and Safety Code section 44072.2, subdivision (c).

Relatedly, the evidence establishes that Stanislaus Smog engaged in fraudulent inspection. Therefore, cause also exists to discipline Stanislaus Smog's registration and station license under Health and Safety Code section 44072.10.

#### **COUNT FIVE**

13. The evidence establishes that Stanislaus Smog engaged in dishonesty or fraud in its testing and certification of Vehicles 1 through 5. When all the evidence is considered, as discussed above, cause exists to discipline Stanislaus Smog's registration and station license under Health and Safety Code section 44072.2, subdivision (d), or 44072.10, subdivision (c).

#### **COUNT SIX**

14. Complainant cause for discipline under Health and Safety Code sections 44072.2, subdivision (a), and 44072.10, subdivision (c), for Vargas's alleged failure to ensure that testing and inspections were "in accordance with the procedures prescribed by the department [*sic*]." However, the legal bases alleged do not relate to following procedures in the testing or inspection of vehicles. Therefore, cause does not exist to discipline Vargas's inspector license under Health and Safety Code section 44072.2, subdivision (a), or 44072.10, subdivision (c)(4).

### **COUNT SEVEN**

15. In conducting inaccurate testing and certification, Vargas violated the governing regulations under the Motor Vehicle Inspection Program. When all the evidence is considered, as discussed above, cause exists to discipline Vargas's inspector license under Health and Safety Code section 44072.2, subdivision (c).

Relatedly, the evidence establishes that Vargas engaged in fraudulent inspection. Therefore, cause exists to discipline Vargas's inspector license under Health and Safety Code section 44072.10.

### **COUNT EIGHT**

16. The evidence establishes that Vargas engaged in dishonesty or fraud in his testing and certification of Vehicles 1 through 5. When all the evidence is considered, as discussed above, cause exists to discipline Vargas's inspector license under Health and Safety Code section 44072.2, subdivision (d), or 44072.10, subdivision (c).

### **COUNT NINE**

17. It is undisputed Vargas failed to complete remedial training as required by Citation M2022-1048. When all the evidence is considered, as discussed above, cause exists to discipline Vargas's inspector license under Health and Safety Code sections 44072.2, subdivision (h), and 44045.6, subdivision (c).

## **Appropriate Discipline**

18. As discussed above, a five-year probationary period is appropriate. It will ensure respondents safely inspect and certify vehicles in a manner consistent with public protection.

## **Costs**

19. The Board may request the ALJ to direct a respondent found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. These factors are: (1) whether respondent was successful in getting charges dismissed or reducing the penalty; (2) whether respondent had a subjective good faith belief in the merits of his position; (3) whether respondent raised a colorable challenge to the proposed discipline; (4) whether respondent has the financial ability to make payments; and (5) whether the scope of the investigation was appropriate to the alleged misconduct.

20. Here, respondents had a subjective good faith belief in the merits of their position, raised a colorable challenge to the proposed discipline, and succeeded in reducing the penalty. There is no evidence of respondents' inability to pay. In light of the relatively straightforward nature of this matter, a total of \$9,655.86 is not warranted. When all the *Zuckerman* factors are considered, the investigation costs should be reduced from \$4,539.36 to \$2,270 and the enforcement costs from \$5,116.50 to \$2,558. The total costs ordered shall be \$4,828.

## ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 274734 issued to Stanislaus Smog, with Jose G. Vargas as its owner; Smog Check, Test-Only, Station License No. TC 274734 issued to Stanislaus Smog; and Smog Check Inspector License No. EO 642792 issued to Jose Vargas are each REVOKED. However, each revocation is stayed, and the registration, station license, and inspector license are each placed on probation for five years on the following terms and conditions.

1. OBEY ALL LAWS. During the period of probation, respondents shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondents.

2. ACTUAL SUSPENSION UNTIL COMPLETION OF SMOG CHECK COURSE. Respondents shall be indefinitely suspended, and the probation period tolled, until respondent Vargas attends and successfully completes a BAR-specified and approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license he holds. Respondent Vargas shall provide to BAR proof of enrollment in the course within 30 days of the effective date of the Decision and proof of successful course completion within 180 days of the effective date of the Decision. Failure to provide proof of enrollment and/or successful course completion to BAR within the timeframes specified shall constitute a violation of probation, and respondents shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

3. POSTING OF SUSPENSION SIGN. During the period of actual suspension, respondents shall prominently post a sign or signs, provided by BAR, indicating the indefinite suspension until completion of the smog check course. The sign or signs

shall be conspicuously displayed in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall be approved by BAR and shall remain posted during the entire period of actual suspension.

4. QUARTERLY REPORTING. During the period of probation, respondents shall report in a manner and schedule determined by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

5. REPORT FINANCIAL INTERESTS. Respondents shall, within 30 days of the effective date of the Decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which any respondents or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

6. ACCESS TO EXAMINE VEHICLES AND RECORDS. Respondents shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondents shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

7. MAINTAIN VALID LICENSE(S) AND REGISTRATION(S). Respondents shall, at all times while on probation, maintain a current and active registration(s) or license(s) with BAR, including any period of suspension or during which probation is tolled. If respondents' registration(s) or license(s) is (are) expired at the time the Decision becomes effective, the registration(s) or license(s) must be renewed within 30 days of the Decision. If respondents' registration(s) or license(s) expire(s) during a term

of probation, by operation of law or otherwise, then upon renewal the registration(s) or license(s) shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration(s) and/or license(s) during the period of probation shall also constitute a violation of probation.

8. SUPERVISION REQUIREMENTS. Respondents shall not delegate their supervisory duties, as they relate to the business activities relevant to the probationary registration and/or license, to another person during the period of probation. Any persons employed by respondents to carry out such business activities shall be directly supervised by respondent. If a bona fide medical condition arises during the period of probation, which temporarily prevents respondents from exercising direct supervision over employees, notice and medical substantiation of the condition shall be submitted to BAR within 10 days of the medical affirmation of the condition.

9. COURSE ON STATUTES AND REGULATIONS. Within 180 days of the effective date of the Decision, respondents shall submit to BAR satisfactory evidence of completion of a laws and regulations training course that meets the following requirements:

(1) The course shall be instructor-led, in a classroom or online setting, and shall include instruction on registrant or licensee compliance with the laws and regulations related to the following areas:

- (A) Estimate Requirements
- (B) Customer Authorization
- (C) Invoice Requirements
- (D) Accepted Trade Standards

(E) Sublet Repair

(F) Return of Parts

(G) Advertising Requirements

(H) Guarantees and Warranties

(I) Maintenance of Records

(2) The course shall include an examination to verify respondents can apply the laws and regulations in daily automotive repair transactions.

(3) The course shall have a minimum of eight hours of dedicated time to instruction and examination, where examination time shall be between 30 minutes to an hour.

(4) The course shall require a minimum score of 70 percent on the examination to provide proof of completion.

If, in the case of a registered automotive repair dealer or licensed Smog Check, or lamp and/or brake station, the registration or license is issued to a partnership, corporation, or a Limited Liability Company, then it shall be the responsibility of the registered automotive repair dealer or licensed Smog Check, or lamp and/or brake station manager, or another person who directly or indirectly controls or conducts the business to complete any required training course specified in the Decision.

10. COST RECOVERY. Respondents shall pay BAR \$4,828 for the reasonable costs of the investigation and enforcement. Respondents shall be permitted to make payments pursuant to a payment plan approved by BAR. Full payment must be made no later than six months before probation terminates. Any order for payment of cost

recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

11. TOLLING OF PROBATION. If, during probation, respondents leave the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondents shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation—other than cost reimbursement requirements, restitution requirements, training requirements, that respondents obey all laws, and that respondent Vargas complete a smog check course—shall be held in abeyance during any period of time of 30 days or more in which respondents are not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondents are not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

12. VIOLATION OF PROBATION. If respondents violate or fail to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the Decision. Once respondents are served notice of BAR's intent to

set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

13. LICENSE SURRENDER. Following the effective date of this Decision, if respondents cease business operations or are otherwise unable to satisfy the terms and conditions of probation, respondents may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate the request and exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the Decision.

Respondents may not petition the Director for reinstatement of the surrendered registration(s) and/or license(s) or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If respondents apply to BAR for a registration or license at any time after that date, respondents must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

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14. COMPLETION OF PROBATION. Upon successful completion of probation, respondents' affected registration(s) and/or license(s) will be fully restored or issued without restriction, if respondents meet all current requirements for registration or licensure and have paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

DATE: February 25, 2026



PATRICE DE GUZMAN HUBER

Administrative Law Judge

Office of Administrative Hearings