

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

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

**ALFREDO AVILES, DBA AVILES SMOG,**

**Automotive Repair Dealer Registration No. ARD 281589,**

**Smog Check Test Only Station License No. TC 281589,**

**ALFREDO AVILES,**

**Smog Check Inspector License No. EO 637646,**

**and**

**BRIAN MEJIA REYES,**

**Smog Check Inspector License No. EO 638732,**

**Respondents.**

**Agency Case No. 79/24-6381**

**OAH No. 2025040778**

## **PROPOSED DECISION**

Erlinda Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 20, 2025.

Christina Thomas, Deputy Attorney General, represented complainant.

Respondent Alfredo Aviles, individually and doing business as Aviles Smog, represented himself.

A Default Decision effective July 10, 2025, was issued against respondent Brian Mejia Reyes based on his failure to file a Notice of Defense to the Accusation. Thus, the hearing on the Accusation proceeded only against respondent Alfredo Aviles.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on October 20, 2025.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On January 27, 2025, complainant Patrick Dorais brought the Accusation in his official capacity as Chief of the Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs, State of California. On January 31, 2025, Alfredo Aviles (respondent) filed a Notice of Defense which contained his request for a hearing on the merits of the Accusation.

2. On September 28, 2015, the Bureau issued Automotive Repair Dealer ARD Registration number ARD 281589 (ARD Registration) to respondent doing

business as Aviles Smog. The ARD Registration was in full force and effect at all relevant times and will expire on September 30, 2026, unless renewed.

3. On October 30, 2015, the Bureau issued Smog Check Test Only Station License number TC 218589 (Station License) to respondent doing business as Aviles Smog. The Station License was in full force and effect at all relevant times and will expire on September 30, 2026, unless renewed.

4. On December 15, 2014, the Bureau issued Smog Check Inspector License number EO 637646 (Inspector License) to respondent in his individual capacity. The Inspector License was in full force and effect at all relevant times and expired on January 31, 2025, unless renewed.

5. On November 13, 2015, the Bureau issued Smog Check Inspector License number EO 638732 to Brian Mejia Reyes (Reyes). At all relevant times, Reyes was employed as a smog check technician at Aviles Smog.

## **Smog Check Program**

6. California's smog check program requires most vehicles in the state to undergo a smog check inspection every two years or when title is transferred.

7. A smog inspection consists of three tests. The emissions test analyzes tailpipe emissions obtained while the vehicle's engine is running. The visual test requires the smog inspector to verify the presence of required emission control systems and components. The functional test requires the smog inspector to physically test certain emission system components.

8. Beginning March 9, 2015, California's Smog Check Program was updated to require the use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is

the smog check equipment required in all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles. The system consists of a certified Data Acquisition Device (DAD), computer, barcode scanner, and printer. The DAD is an On-Board Diagnostic (OBD) scan tool that, when requested by the BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the BAR-OIS software and will be retrieved. The DAD connects between the BAR-OIS computer and the vehicle's Diagnostic Link Connector (DLC) located in the vehicle's passenger compartment. The barcode scanner is used to input inspector information, the vehicle identification number (VIN), and Department of Motor Vehicles renewal information. The printer provides a Vehicle Inspection Report (VIR) containing inspection results for motorists and a Smog Check Certificate of Compliance number for passing vehicles.

9. During a BAR-OIS inspection, engine operating parameters are retrieved from the vehicle's OBD II system and recorded to the Bureau's Vehicle Information Database (VID). This is accomplished during the functional portion of the BAR-OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when prompted by the BAR-OIS analyzer screen prompt. Some of the parameters recorded are:

A. Engine speed in revolutions per minute (RPM).

B. Throttle position, as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. Measured in a percentage of opening from zero percent at idle and near or up to 100 percent at full throttle.

C. Manifold absolute pressure, as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle are as follows: zero kpa being

absolute vacuum, 25 to 45 kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level.

D. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract. Measured in grams per second (gps).

10. During normal engine operation at idle, engine speed is relatively steady around its target idle speed. With the engine idling, the TPS is steady and at or near zero percent. The MAP and MAF readings are also steady. In order for the engine speed to increase, the throttle would have to be opened in order to increase airflow through the engine. The engine's management systems supply fuel and spark timing appropriate to any changes in throttle position and engine speed. An increase in throttle, measured by the TPS, which increases engine RPM, would result in a corresponding increase in MAF as well as a change in MAP. Stated another way, any movement in the throttle from the idle position will result in an increase of airflow through the engine with corresponding increases in RPM, MAF, and MAP.

11. During a BAR-OIS smog check inspection, along with other visual and functional inspections, there is an OBD II query portion of the inspection. The OBD II query is performed with the engine idling and, when requested by the OIS analyzer, an elevated or increased engine speed. The increase in engine speed is performed by the inspector by stepping on the throttle pedal or manually opening the throttle, resulting in a corresponding increase in engine RPMs by allowing an increase in airflow into the engine.

12. The Bureau has become aware of methods that some smog check stations and smog check inspectors use to fraudulently issue smog certificates to vehicles that may not pass a smog check test on their own, or in some instances, are

not even present during the time the test is performed. "Clean plugging" is a method by which another vehicle's OBD II system, or another source such as defeat devices, are used to generate passing data readings or diagnostic information for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance and/or not present for testing. Defeat devices attempt to simulate engine operation during a smog check inspection by transmitting OBD II data to the VID which has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the BAR-OIS inspection.

### **Analysis of Test Data**

13. Daniel Yanez testified at the hearing. Mr. Yanez is a Program Representative II with the Bureau. He is also a licensed smog check inspector.

14. On April 11, 2024, Mr. Yanez conducted a review of the VID data for smog check inspections performed at Aviles Smog from November 28, 2023, through April 8, 2024. Mr. Yanez prepared an Investigation Report dated July 29, 2024, that summarized the findings of his review of VID data for Aviles Smog. (Exh. 4.)

15. Mr. Yanez's review of the VID data for Aviles Smog revealed a pattern of vehicles being certified with engine operating parameters not corresponding to normal engine operation, confirming the vehicles receiving smog certificates were not tested during the OBD II functional test, which constituted clean plugging. Mr. Yanez's review into the smog check activities at Aviles Smog confirmed that fraudulent smog check Certificates of Compliance were issued to 10 vehicles (subject vehicles). The smog inspections for the subject vehicles were performed under the smog check technician license number of respondent's employee, Reyes.

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16. Subject vehicle 1 was a 2000 Toyota Tacoma that was issued a smog certificate on November 28, 2023. OIS Test Data indicated when the engine speed was held steady at around 740 RPM, the throttle was fixed at an 11.8 percent opening and the MAF was fixed at 0.57 gps. The engine speed was then accelerated and held steady at 1500 RPM, which should have resulted in corresponding changes in the throttle position and the MAF; however, the throttle position and MAF were unchanged and remained fixed at 11.8 percent and 0.57 gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2000 Toyota Tacoma being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

17. Subject vehicle 2 was a 2004 Lexus IS300 that was issued a smog certificate on December 4, 2023. OIS Test Data indicated when the engine speed was held steady at around 650 RPM, the throttle was fixed at a 12.5 percent opening and the MAF was fixed at 3.04 gps. The engine speed was then accelerated and held steady at 1800 RPM, which should have resulted in corresponding changes in the throttle position and the MAF; however, the throttle position and MAF were unchanged and remained fixed at 12.5 percent and 3.04 gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2004 Lexus IS300 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

18. Subject vehicle 3 was a 2005 Chevrolet Silverado K1500 that was issued a smog certificate on December 14, 2023. OIS Test Data indicated when the engine speed was held steady at around 700 RPM, the throttle was fixed at a 3.5 percent opening, the MAP was fixed at 32 kpa, and the MAF was fixed at 3.35 gps. The engine speed was then accelerated and held steady at 1625 RPM, which should have resulted in corresponding changes in the throttle position, MAP, and MAF; however, the throttle position, MAP, and MAF were unchanged and remained fixed at 3.5 percent,

32 kpa, and 3.35 gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2005 Chevrolet Silverado K1500 being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

19. Subject vehicle 4 was a 2002 Honda Accord EX that was issued a smog certificate on January 24, 2024. OIS Test Data indicated when the engine speed was held steady at around 595 RPM, the throttle was fixed at a 9.8 percent opening and the MAP was fixed at 26 kpa. The engine speed was then accelerated and held steady at 1630 RPM, which should have resulted in corresponding changes in the throttle position and MAP; however, the throttle position and MAP were unchanged and remained fixed at 9.8 percent and 26 kpa, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2002 Honda Accord EX being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

20. Subject vehicle 5 was a 2003 Toyota Corolla CE that was issued a smog certificate on February 3, 2024. OIS Test Data indicated when the engine speed was held steady at around 680 RPM, the throttle was fixed at a 13.3 percent opening and the MAF was fixed at 2.35 gps. The engine speed was then accelerated and held steady at 1780 RPM, which should have resulted in corresponding changes in the throttle position and the MAF; however, the throttle position and MAF were unchanged and remained fixed at 13.3 percent and 2.35 gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2003 Toyota Corolla CE being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

21. Subject vehicle 6 was a 2001 Nissan Frontier Crew Cab XE that was issued a smog certificate on February 24, 2024. OIS Test Data indicated when the engine speed was held steady at around 860 RPM, the throttle was fixed at a zero percent opening and the MAF was fixed at 0.35 gps. The engine speed was then accelerated

and held steady at 1950 RPM, which should have resulted in corresponding changes in the throttle position and the MAF; however, the throttle position and MAF were unchanged and remained fixed at zero percent and 0.35 gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2001 Nissan Frontier Crew Cab XE being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

22. Subject vehicle 7 was a 2003 Ford Ranger that was issued a smog certificate on March 13, 2024. OIS Test Data indicated when the engine speed was held steady at around 600 RPM, the throttle was fixed at a 16.9 percent opening and the MAF was fixed at 4.54 gps. The engine speed was then accelerated and held steady at 1890 RPM, which should have resulted in corresponding changes in the throttle position and the MAF; however, the throttle position and MAF were unchanged and remained fixed at 16.9 percent and 4.54 gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2003 Ford Ranger being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

23. Subject vehicle 8 was a 2005 Volkswagen GTI that was issued a smog certificate on March 27, 2024. OIS Test Data indicated when the engine speed was held steady at around 700 RPM, the throttle was fixed at a 13.3 percent opening and the MAF was fixed at 3.5 gps. The engine speed was then accelerated and held steady at 1750 RPM, which should have resulted in corresponding changes in the throttle position and the MAF; however, the throttle position and MAF were unchanged and remained fixed at 13.3 percent and 3.5 gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2005 Volkswagen GTI being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

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24. Subject vehicle 9 was a 2006 Kia Spectra LX that was issued a smog certificate on April 3, 2024. OIS Test Data indicated when the engine speed was held steady at around 880 RPM, the throttle was fixed at a 6.7 percent opening and the MAF was fixed at 2.17 gps. The engine speed was then accelerated and held steady at 1970 RPM, which should have resulted in corresponding changes in the throttle position and the MAF; however, the throttle position and MAF were unchanged and remained fixed at 6.7 percent and 2.17 gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2006 Kia Spectra LX being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

25. Subject vehicle 10 was a 2001 Chevrolet Astro that was issued a smog certificate on April 8, 2024. OIS Test Data indicated when the engine speed was held steady at around 650 RPM, the throttle was fixed at a 0.4 percent opening, the MAP was fixed at 102 kpa, and the MAF was fixed at zero gps. The engine speed was then accelerated and held steady at 1800 RPM, which should have resulted in corresponding changes in the throttle position, MAP, and MAF; however, the throttle position, MAP, and MAF were unchanged and remained fixed at 0.4 percent, 102 kpa, and zero gps, respectively. These discrepancies in the OIS Test Data indicated the OIS DAD was not connected to the 2001 Chevrolet Astro being certified, causing the issuance of a fraudulent Smog Certificate of Compliance.

26. Mr. Yanez concluded the Smog Certificates of Compliance issued for each of the subject vehicles were the result of clean plugging. The steady idle and steady elevated engine speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings with the same idle speed parameters are not characteristic or expected for normal engine operation. The Certificates of Compliance for the subject vehicles issued by Aviles Smog were false and fraudulent, because they

contained false and misleading information that the subject vehicles had been properly inspected when, in fact, they had not.

## **Respondent's Evidence and Contentions**

27. Respondent testified at the hearing. His testimony was explained and supplemented by his written declaration dated October 19, 2025, and his document titled, "Timeline of Key Events – Aviles Smog." (Exh. A, pp. B4 and B206.)

28. In early June 2024, respondent discovered he could not log into the BAR-OIS Station Manager for Aviles Smog. The system indicated respondent was not the "owner or manager" of Aviles Smog. Respondent contacted the BAR field office in South El Monte and reported an unauthorized change in ownership for Aviles Smog had occurred without his knowledge. On June 15, 2024, as directed by the BAR field office, respondent submitted a BAR Technician Access/Change Request form, which is a form used for adding or removing a technician license for a station. (Exh. A, p. B10.) The form included a handwritten note, "Request to Change Owner Role." (*Ibid.*)

29. On September 23, 2024, respondent made a Public Records Act request to the Bureau for the "ownership-change record." He wanted to know who changed the ownership of his station. (Exh. A, pp. B4, B7.) On October 2, 2024, the Bureau sent respondent a letter in response to his Public Records Act request, which stated: "The Bureau was unable to identify or locate records matching the description of the criteria set forth in your request." (*Id.*, p. B8.)

30. Respondent contends he "was not the owner or manager of record" for Aviles Smog when the fraudulent Certificates of Compliance for the subject vehicles were issued between November 2023 and April 2024. (Exh. A, p. B206.) In his declaration, respondent stated: "I did not authorize or supervise station operations

during that time." (*Id.*, at p. B4.) Thus, respondent contends he is not liable for those fraudulent Certificates of Compliance.

31. Respondent's contention that there was an ownership change for Aviles Smog is incorrect. At hearing, Mr. Yanez explained he reviewed the Bureau's internal databases of license information. Mr. Yanez found there was no ownership change for Aviles Smog. Respondent has been the owner since the issuance of his ARD Registration and Station License. Mr. Yanez believes the "change in ownership" claimed by respondent relates to a change in his status in the BAR-OIS software. Mr. Yanez believes respondent's status as "owner" was changed in the BAR-OIS software. Such a change in the BAR-OIS software, however, does not change respondent's ownership of the ARD Registration or Station License.

32. Respondent has held his ARD Registration and Station License since 2015, approximately 10 years. He has held his Inspector License for 11 years. No evidence was presented of respondent having a history of prior discipline with the Bureau.

## **Cost Recovery**

33. The Bureau incurred enforcement costs of \$9,975 and investigative costs of \$1,999.48, for a total of \$11,974.48. (Exh. 3.)

34. Respondent contends it is unfair he should have to pay the Board's costs in this matter. He reiterated he did not have control over his shop when the Certificates of Compliance were issued for the subject vehicles and had "nothing to do with this."

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35. Respondent is currently a student at Long Beach City College and working towards an associate's degree in psychology. Respondent initially testified he is not currently employed and does not work at his shop, Aviles Smog. Later in his testimony, however, respondent admitted he earns \$500 per week as the manager/owner overseeing the shop. Respondent testified he is married, and his wife works at a warehouse. Respondent testified he would need a payment plan if he is required to pay the Board's costs.

## **LEGAL CONCLUSIONS**

### **Legal Principles**

#### **BURDEN AND STANDARD OF PROOF**

1. The burden of proof in a licensing disciplinary action is on the party making the charges in an accusation. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789 fn. 9.) In a case that involves an occupational license, complainant bears the burden of proving cause for discipline by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

#### **AUTOMOTIVE REPAIR ACT**

2. The Automotive Repair Act is set forth at Business and Professions Code section 9880 et seq. and relates to ARD registrations.

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3. Pursuant to Business and Professions Code section 9884.7, subdivision (a), the Director of Consumer Affairs may suspend, revoke, or place on probation the registration of an automotive repair dealer for certain acts or omissions related to the conduct of the automotive repair dealer's business which are done by the automotive repair dealer or any automotive technician or employee, including but not limited to:

- (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. [¶ . . . ¶]
- (4) Any other conduct that constitutes fraud. [¶ . . . ¶]
- (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

### **MOTOR VEHICLE INSPECTION PROGRAM**

4. The Motor Vehicle Inspection Program is set forth at Health and Safety Code section 44000 et seq. and relates to smog check station and inspector licenses. The implementing regulations are set forth at California Code of Regulations, title 16 (CCR), section 3340.1 et seq.

5. 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. [¶ . . . ¶] (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.

6. Health and Safety Code section 44072.10, subdivision (c), provides, in part: "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 clean plugging. (*Id.*)

7. Health and Safety Code section 44012 provides, in pertinent part: "The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board."

8. Health and Safety Code section 44015, subdivision (b), states: "If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

9. Health and Safety Code section 44032 states: "No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified smog check technicians shall perform tests of emission control devices and systems in accordance with Section 44012."

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10. CCR section 3340.24, subdivision (c), states: "The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance."

11. CCR section 3340.30, subdivision (a), provides that a licensed smog check inspector shall, at all times while licensed, inspect, test and repair vehicles, as applicable, in accordance with Health and Safety Code sections 44012 and 44035, and CCR section 3340.42.

12. CCR section 3340.35, subdivision (c), states in pertinent part: "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."

13. CCR section 3340.41, subdivision (c), states: "No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information about the vehicle being tested."

14. CCR section 3340.42 states, in part: "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45."

### **Responsibility for Employee's Conduct**

15. Respondent is responsible for the improper smog inspections of the subject vehicles performed by his employee, Reyes. As the owner of Aviles Smog, respondent has a nondelegable duty and is strictly liable for the conduct of his

employees and agents under the doctrine of respondeat superior. "The owner of a license is obligated to see that the license is not used in violation of the law." (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 359-360 [finding that an administrative regulation promulgated by the DMV can impose strict liability on auto dealers for the fraudulent statements of its salesperson-employees to the public].)

16. This nondelegable duty applies to an employee or agent's fraudulent conduct, even where the licensee did not know of the conduct. (*Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d, 793, 796-797, 799.) A licensee who operates his business through employees must be responsible to the licensing authority for the acts of agents or employees performed "in the course of his business in the operation of the license" even if the licensee does not have knowledge of the unlawful acts or authorize the activity. (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192-193.)

17. Although respondent's employee, and not respondent himself, performed the clean plugging on the subject vehicles, respondent's ARD Registration and Station License may, nonetheless, be subject to discipline for the employee's fraudulent conduct.

## **ARD Registration**

18. First Cause for Discipline: Cause exists to discipline respondent's ARD Registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that between November 28, 2023, and April 8, 2024, respondent, through his employee Reyes, made untrue and misleading statements that were known to be untrue and misleading, by issuing electronic certificates of compliance for each of the

subject vehicles, certifying the vehicles had passed inspection and were in compliance with applicable laws and regulations when, in fact, the vehicles had been inspected using the clean plugging method and, thus, were not tested or inspected as required by applicable laws and regulations. (Factual Findings 6 through 26.)

19. Second Cause for Discipline: Cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that between November 28, 2023, and April 8, 2024, respondent, through his employee Reyes, committed acts that constitute fraud, by issuing electronic certificates of compliance for each of the subject vehicles without first performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program. (Factual Findings 6 through 26.)

20. The preponderance of the evidence established that the smog inspections of the subject vehicles were the product of clean plugging, which is fraudulent conduct. Complainant's evidence of clean plugging was persuasive and un rebutted.

21. Third Cause for Discipline: Cause exists to discipline respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), in that between November 28, 2023, and April 8, 2024, respondent, through his employee Reyes, failed in a material respect to comply with provisions of the Automotive Repair Act or regulations adopted pursuant to it, when electronic certificates of compliance were issued for each of the subject vehicles without bona fide inspections having been performed of the emission control devices and systems on those vehicles, thereby depriving the people of the State of California of the

protection afforded by the Motor Vehicle Inspection Program. (Factual Findings 6 through 26.)

22. Business and Professions Code section 9884.7 provides that an ARD registration may be disciplined for “acts or omissions related to the conduct of the business of the automotive repair dealer.” A smog check inspection is an activity related to the conduct of an automotive repair dealer’s business. Only a registered automotive repair dealer may be licensed as a smog check station. (CCR § 3340.10.) Smog check inspections may only be performed at licensed smog stations, by licensed smog technicians. (CCR §§ 3340.28, 3340.15.) Under Health and Safety Code section 44002, inspections and repairs performed pursuant to the Motor Vehicle Inspection Program must comply with all requirements imposed by, among others, “Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code [i.e., the Automotive Repair Act] and Chapter 33 (commencing with Section 3300) of Title 16 of the California Code of Regulations.” When a vehicle passes the smog check inspection, the certificate of compliance is issued by the station, not the inspector, although the inspector’s action of passing the car is a predicate act to the issuance of the certificate of compliance. (Health & Saf. Code, 44015, subd. (b); CCR § 3340.35, subd. (c).) Therefore, discipline against an automotive repair dealer’s registration may be taken pursuant to Business and Professions Code section 9884.7 based on illegal smog check activities.

## **Station License**

23. Fourth Cause for Discipline: Cause exists to discipline respondent’s Station License, pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between November 28, 2023, and April 8, 2024, respondent, through his

employee Reyes, with respect to the subject vehicles, violated the Health and Safety Code, based on Factual Findings 6 through 26, as follows:

- Violated Health and Safety Code section 44012 by failing to ensure that the emission control tests were performed on the subject vehicles in accordance with procedures prescribed by the department.
- Violated Health and Safety Code section 44015, subdivision (b), by issuing electronic smog certificates of compliance for the subject vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with Health and Safety Code section 44012.

24. Fifth Cause for Discipline: Cause exists to discipline respondent's Station License, pursuant to Health and Safety Code section 44072.2, subdivision (c), in that between November 28, 2023, and April 8, 2024, respondent, through his employee Reyes, failed to comply with provisions of the CCR, based on Factual Findings 6 through 26, as follows:

- Violated CCR section 3340.24, subdivision (c), by falsely or fraudulently issuing electronic smog certificates of compliance for the subject vehicles.
- Violated CCR section 3340.30, subdivision (a), by failing to inspect and test the subject vehicles in accordance with Health and Safety Code sections 44012 and 44035, and CCR section 3340.42.
- Violated CCR section 3340.35, subdivision (c), by issuing electronic certificates of compliance to the subject vehicles, even though the vehicles had not been properly inspected in accordance with CCR section 3340.42.

- Violated CCR 3340.41, subdivision (c), by knowingly entering false information into the emissions inspection system for the subject vehicles.
- Violated CCR section 3340.42 by failing to ensure that the smog inspections conducted for the subject vehicles were done in accordance with the Bureau's specifications.

25. Sixth Cause for Discipline: Cause exists to discipline respondent's Station License, pursuant to Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that between November 28, 2023, and April 8, 2024, respondent, through his employee Reyes, committed acts involving dishonesty, fraud or deceit whereby another was injured, by issuing electronic smog certificates of compliance for the subject vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the people of the State of California of the protection afforded by the Motor Vehicle Inspection Program, based on Factual Findings 6 through 26.

26. Seventh Cause for Discipline: Cause exists to discipline respondent's Station License, pursuant to Health and Safety Code section 44072.2, subdivision (a), in that respondent, through his employee Reyes, failed to comply with the following provisions of the Health and Safety Code, based on Factual Findings 6 through 26:

- Violated section 44032 by failing to perform tests of emission control devices and systems of the subject vehicles in accordance with Health and Safety Code section 44012.
- Violated section 44015, subdivision (b), by causing electronic smog certificates of compliance to be issued for the subject vehicles without

ensuring the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

27. Eighth Cause for Discipline: Cause does not exist to discipline respondent's Inspector License, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1). The clean plugging that resulted in fraudulent Certificates of Compliance being issued for the subject vehicles was committed by Reyes, not respondent in his individual capacity.

28. Ninth Cause for Discipline: Cause does not exist to discipline respondent's Inspector License, pursuant to Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c). The clean plugging that resulted in fraudulent Certificates of Compliance being issued for the subject vehicles was committed by Reyes, not respondent in his individual capacity.

## **Level of Discipline**

29. Administrative proceedings to revoke, suspend or impose discipline on a professional or occupational license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) The statutes relating to the licensing of professions and occupations are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Protection of the public is the Bureau's highest priority in exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code, § 9880.3.)

30. The Bureau's "Guidelines for Disciplinary Orders and Terms and Conditions of Probation (Rev. June 2021)" (Guidelines), which are incorporated by reference in the Bureau's regulations at CCR section 3395.4, were considered. The

Guidelines include recommended levels of discipline for various violations. For the specific violations alleged against respondent in this matter, the recommended probation periods range from two to five years.

31. The Guidelines also contain factors in aggravation and factors in mitigation that are to be considered in determining the level of discipline to be imposed in a given case. (Guidelines, pp. 1-2.) The factors in aggravation include prior warnings from BAR; prior office conferences with BAR; prior history of citations; prior history of formal disciplinary action; evidence that the unlawful act was of a pattern of practice; and evidence of any other conduct which constitutes fraud or gross negligence. The factors in mitigation include the absence of prior disciplinary action, evidence that the violation was not part of a pattern or practice, evidence of substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of recurrence of the violation; and evidence of any other conduct which could constitute a factor in mitigation.

32. In this case, the Bureau's review of data revealed the smog inspections of the subject vehicles were the result of clean plugging, which is fraudulent conduct. The clean plugging was committed by respondent's employee, Reyes. No evidence was presented that respondent himself committed the clean plugging.

33. However, there is a public protection concern with respondent as a Bureau licensee because of his failure to adequately supervise and monitor the station's activities and employees. The fraudulent Certificates of Compliance for the subject vehicles were issued between November 2023 and April 2024. Respondent admitted he did not authorize or supervise station operations during that five-month period, which is concerning. In fact, respondent did not realize he was denied access to the BAR-OIS Station Manager until June 2024. As the owner of Aviles Smog,

respondent has a nondelegable duty to see that his ARD Registration and Station License are not used in violation of the law. Respondent failed to supervise the operations of Aviles Smog for approximately seven months, from November 2023 until June 2024. His failure to supervise led to the issuance of fraudulent Certificates of Compliance for the 10 subject vehicles.

34. Respondent has been a licensee of the Bureau for approximately 10 to 11 years and has no history of prior discipline. The clean plugging involved with the subject vehicles does not appear to be a pattern or practice with his station.

35. Based on the foregoing, the appropriate level of discipline against respondent's ARD Registration and Station License is a stayed revocation with five years' probation under the terms and conditions set forth in the Order below. The Accusation shall be dismissed against respondent's Inspector License.

### **Cost Recovery**

36. In any order issued in resolution of a disciplinary proceeding, at the request of the Bureau, the ALJ may direct the licentiate found to have committed a violation to pay a sum not to exceed the reasonable costs of investigation and enforcement. A certified copy of the actual costs, signed by the Bureau or its designated representative, is prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. (Bus. & Prof. Code § 125.3, subds. (a), (c); see Cal. Code Regs., tit. 1, § 1042, subd. (b).)

37. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the

reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. Those factors include: (1) the licentiate's success in getting the charges dismissed or reduced; (2) the licentiate's subjective good faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate's financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

38. The declarations signed with the attached statements constitute prima facie evidence of the reasonableness of the costs incurred for prosecution. (Bus. & Prof. Code, § 125.3, subd. (c).) Respondent failed to rebut the reasonableness of the costs, or to establish sufficient cause to not award these costs to the Bureau. Respondent requested a payment plan if he is ordered to pay costs.

39. Therefore, cause exists, pursuant to Business and Professions Code section 125.3, to order respondent to pay the Bureau \$11,974.48 for the reasonable costs of the investigation and enforcement of this matter. (Factual Findings 33 through 35.) At the Bureau's discretion, respondent shall be allowed to pay these costs in a payment plan.

## **ORDER**

IT IS HEREBY ORDERED that ARD Registration No. ARD 281589 and Smog Check Test Only Station License No. TC 281589 issued to Alfredo Aviles (Respondent) doing business as Aviles Smog, and any other ARD Registrations issued to Respondent, are all revoked; however, the revocations are stayed, and Respondent is placed on probation for five years on the terms and conditions set forth below. IT IS HEREBY

FURTHER ORDERED that the Accusation is dismissed against Respondent's Smog Check Inspector License No. EO637646.

1. Obey All Laws

During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Respondent.

2. Quarterly Reporting

During the period of probation, Respondent shall report either by personal appearance or in writing as determined by BAR on a schedule set 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.

3. Reporting Financial Interests

Respondent 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 Respondent or any partners, officers, or owners of any Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records

Respondent 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. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

## 5. Tolling of Probation

If, during probation, Respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Respondent 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, and that Respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Respondent is 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 Respondent is 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.

## 6. Violation of Probation

If Respondent violates or fails 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 Respondent is 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.

7. Maintain a Valid License

Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If Respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by Respondent within 30 days of that date. If Respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal Respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

8. Cost Recovery

Respondent shall pay the Bureau of Automotive Repair \$11,974.48 for the reasonable costs of the investigation and enforcement of Case No. 79/24-6381. Respondent shall make such payment as directed by BAR. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for Case No. 79/24-6381. 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.

9. Completion of Probation

Upon successful completion of probation, Respondent's affected registration and licenses will be fully restored or issued without restriction, if Respondent meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

10. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, Respondent 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 Respondent's request and to 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.

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Respondent may not petition the Director for reinstatement of the surrendered registration and/or license, 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 Respondent applies to BAR for a registration or license at any time after that date, Respondent 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.

DATE: 11/19/2025

*Signed copy on File*

ERLINDA SHRENGER

Administrative Law Judge

Office of Administrative Hearings