

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

In the Matter of the Accusation Against:

YESSENIA MARTINEZ RODRIGUEZ, d.b.a. AINESSEY SMOG,

(Automotive Repair Dealer Registration No. ARD 291206)

(Smog Test, Test Only, Station License No. TC 291206)

and

JOHN DANIAL,

(Smog Check Inspector License No. EO 638012)

and

RON E. ROGERS,

(Smog Check Inspector License No. EO 644073),

Respondents.

Agency Case No. 79/24-18510

OAH No. 2025070583

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 5, 2026, by videoconference.

Stephen A. Aronis, Deputy Attorney General, represented Patrick Dorais, complainant, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

John Danial, respondent, appeared and represented himself.

There was no appearance by or on behalf of respondent Yessenia Martinez Rodriguez, d.b.a. Ainessey Smog, despite notice being properly sent to her of the time, date and manner of the hearing.

Complainant withdrew the charges against respondent Ron E. Rogers because he has passed away. The accusation is amended accordingly to reflect this.

Evidence was received, the record closed, and the matter submitted for decision on January 5, 2026.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 30, 2018, the Bureau issued Automotive Repair Dealer Registration Number ARD 291206 to Yessenia Martinez Rodriguez, d.b.a. Ainessey

Smog.¹ The Automotive Repair Dealer Registration (ARD) was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2026, unless renewed.

2. On June 8, 2018, the Bureau issued Smog Check Test-Only Station License Number TC 291206 to respondent Ainessey. The Smog Check Test-Only Station License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2026, unless renewed.

3. Respondent Ainessey Smog is also certified as a STAR Station. The certification was issued on August 16, 2018, and will remain active unless the ARD registration and/or Smog Check Station license is revoked, canceled, licenses become delinquent, or the certification is invalidated.

4. On April 3, 2015, the Bureau issued Smog Check Inspector License Number EO 638012 to respondent Danial. The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2027, unless renewed.

5. On December 22, 2022, the Bureau issued Smog Check Inspector License Number EO 644073 to Ron E. Rogers. The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein.

¹ In this decision respondent Rodriguez is referred to as "respondent Ainessey Smog" consistent with how she is referenced in the accusation.

Procedural History

6. On March 20, 2025, complainant signed and filed the accusation against respondents. All respondents were served with the accusation, and each of them timely filed Notices of Defense. The matter was set for evidentiary hearing before OAH pursuant to Government Code section 11500 et seq. Respondent Rodriguez failed to appear despite being properly served with the notice of the time, place and matter of the hearing. Pursuant to Government Code section 11520 she was found in default. Complainant elected to proceed with a prove-up hearing against her.

As mentioned, Ron E. Rogers was originally charged under this accusation. Because Mr. Rogers has passed away, complainant has withdrawn causes for discipline nine and 10 against him. The accusation is amended accordingly to reflect this.

California's Smog Check Program

7. The Bureau regulates the smog check industry. (Motor Vehicle Inspection Program [Health & Saf. Code, §§ 44000 - 44127].) California's Smog Check Program is designed to reduce air pollution by identifying vehicles with excess emissions so they can be repaired or retired. Smog check inspections of vehicles are required approximately every two years or upon a change of ownership. As part of its enforcement operations, the Bureau conducts investigations and analyzes data transmitted to the Bureau during smog check inspections.

8. Since March 9, 2015, the Smog Check Program has required Smog Check stations to use an On-Board Diagnostic (OBD) Inspection System (BAR-OIS) when inspecting most model-year 2000 and newer gasoline and hybrid vehicles, and most model-year 1998 and newer diesel vehicles. The BAR-OIS consists of a certified Data Acquisition Device (DAD), computer with specialized software, bar code scanner, and

printer. The DAD is an OBD tool that retrieves OBD data from the vehicle when requested. The bar code scanner is used to input the inspector's information, the vehicle identification number (VIN), and the Department of Motor Vehicles (DMV) registration renewal information. At the conclusion of the inspection, the printer provides a Vehicle Inspection Report (VIR) with the inspection results and a Smog Check Certificate of Compliance for passing vehicles.

9. During the functional portion of a BAR-OIS inspection, a vehicle's engine operating parameters are retrieved from the OBD II system and recorded to the Vehicle Information Database (VID.) The reported parameters include: (1) engine speed in revolutions per minute (RPM); (2) throttle position, measured by a Throttle Position Sensor (TPS) in a percentage of opening from zero percent at idle and near or up to 100 percent at full throttle; (3) manifold absolute pressure (MAP) as measured by a manifold air pressure sensor in kilo pascals; and (4) mass air flow (MAF) measured in grams per second by a MAF sensor.

10. During normal operation, a vehicle's TPS, MAP, and MAF are steady when the engine is idle. To increase engine speed, the throttle is opened to increase airflow through the engine. An increase in throttle, as measured by the TPS, increases the engine's RPM, resulting in corresponding increases in MAF and MAP. During a BAR-OIS inspection, there is an OBD II query portion along with the other visual and functional inspections. It is performed with the engine idling and at an elevated speed. The increase in engine speed is accomplished by the technician stepping on the throttle pedal or manually opening the throttle.

As discussed in more detail below, when the data shows no increases in the MAF and MAP when the RPM is increased, a cheating device, or simulator device, or another vehicle's properly functioning OBD system, might be being used to issue a

fraudulent certificate of compliance. Use of a cheating device or accessing another vehicle's OBD system is known as "clean plugging."

11. To access the BAR-OIS System, the inspector uses the bar code scanner to scan the inspector's badge with a unique bar code and then enter their unique password. Beginning May 1, 2023, the Bureau requires that inspectors access the system by having their palms scanned. An inspector is not permitted to share his unique password with any other person, or allow any other person to perform an inspection using their bar code and password.

12. The inspector uses the bar code scanner to scan the bar code: (a) on the DMV renewal notice or registration documentation, (b) on the driver's side door, or (c) under the front windshield of the vehicle to be inspected. Scanning the barcodes causes the vehicle's VIN, and year, make, and model to populate in the computer software. The inspector may also manually enter the VIN into the computer software.

13. After going through the steps to smog check the vehicle, the inspector uses the BAR-OIS printer to print a VIR, which shows the overall inspection result and the Smog Check certificate of compliance number for passing vehicles. These Certificates of Compliance are purchased in blocks of fifty through the Emissions Inspection System (EIS) or OIS from the VID, using a pre-arranged electronic bank account debit system or by check, via mail, from Bureau Headquarters in Sacramento. Each Certificate of Compliance has a unique control number so that it can be tracked to determine which Smog Check Station purchased the Certificate of Compliance and to which vehicle it was issued. The inspector signs and dates the VIR, certifying under penalty of perjury that they performed the inspection in accordance with Bureau requirements and that the information on the VIR is true and accurate. The inspector then provides the customer with a signed copy of the VIR, and the Smog Check

Station retains a signed copy as well. An electronic copy of the VIR is sent to the DMV with a unique DMV ID number, which serves as the inspector's electronic signature.

14. The VIR and OIS Test Details for each inspection are also transmitted to the Bureau and stored in the Bureau's VID. The OIS Test Details contain the underlying data retrieved from the vehicle under inspection, including the eVIN, communication protocol, and Parameter Identification numbers (PID), which are specific diagnostic information from a vehicle's computer, sensor readings, or engine monitoring status. Smog Check Station owners do not have access to the VID or the OIS Test Details for inspections performed by their inspectors.

Smog Check Inspection Process

15. Steve Koch, Program Representative I, testified at the hearing. Mr. Koch has been a licensed Smog Check inspector since 1996 and has conducted over several hundred investigations of smog stations and smog check inspectors. Mr. Koch described how an inspector conducts an exam using either his password, or since May 1, 2023, by scanning his palm before the inspector can perform the OBD II smog inspections. Mr. Koch also explained the "dynamic data" generated during the functional portion of the smog inspection where the vehicle's engine is operated and specific data points are recorded, and how the Bureau analyzes this data.

16. Mr. Koch described the OIS inspection process. Engine operating parameters are retrieved from the vehicle's OBD II system and recorded to the VID during the functional portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's Diagnostic Link Connector when prompted by the OIS analyzer screen prompt. These parameters include the vehicle's RPM, throttle position, manifold absolute pressure as measured by a MAP connected to an intake manifold source,

mass air flow as measured by the MAF sensor, and ignition timing is set by the vehicle Powertrain Control Module based on engine speed and load, which is measured in degrees Before Top Dead Center (BTDC).

17. Mr. Koch testified that that during normal engine operation at idle, engine speed is relatively steady around its target idle speed. With the engine idling, the TPS, MAP and MAF readings are steady. For the engine speed to increase, the throttle would have to be opened 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. As mentioned above, an increase in throttle, measured by the TPS, which increases the engine's RPM, would result in corresponding increases in MAF as well as a change in MAP.

18. Mr. Koch explained that movement in the throttle from the idle position will increase airflow through the engine with corresponding increases in RPM and/or MAF along with changes in MAP. If no such movement occurs this indicates that a "simulator" or cheating device is being used to circumvent the smog test process.

19. With regard to respondents, discrepancies in the data generated during smog inspections at Ainessey Smog, where respondents worked, came to Mr. Koch's attention, and he conducted an investigation into smog inspections performed at the station. Mr. Koch identified 10 instances where the data suggested a cheating device was used to fraudulently pass the vehicles by "clean plugging" them because no movement was recorded in the key engine data points despite increases in the vehicles' RPM. Respondent Danial performed five of the inspections. Mr. Rogers performed the other five. Based on his review of the data for these vehicles, respondent Danial and Mr. Rogers in their capacities as employees at Ainessey Smog issued fraudulent Certificates of Compliance.

2000 SILVERADO SMOG TEST (#1)(RESPONDENT DANIAL)

20. On March 17, 2023, respondent Danial performed a smog test and issued a Certificate of Compliance on a 2000 Chevrolet Silverado.

21. The dynamic data for the Silverado shows the throttle, MAF and MAP readings remained the same even after the RPM was increased, and the ignition timing advance for the Silverado's cylinder was fixed at the same 17 degrees BTDC even after the RPM increase.

Mr. Koch testified that these readings are not possible for normal engine operation, and the discrepancies in the OIS Test Data show that the OIS DAD was not connected to the 2000 Silverado being certified, which respondent Danial certified passed the smog check inspection. Respondent Danial fraudulently certified this vehicle.

22. Mr. Koch noted that respondent Danial on March 9, 2023, tested and failed the Silverado. Another smog station tested and failed the vehicle on March 2, 2023.

2004 TOYOTA HIGHLANDER SMOG TEST (#2)(RESPONDENT DANIAL)

23. On April 13, 2023, respondent Danial tested and issued a Certificate of Compliance for a 2004 Toyota Highlander.

24. The dynamic data OBDII PID Chart for this vehicle shows fixed MAF and MAP readings and the vehicle's #1 cylinder is fixed at 16 degrees BTDC. After the engine speed is accelerated to approximately 1800 RPM, the throttle is fixed at the same opening prior to the increase, the MAF is also fixed at the same reading as before the increase, and the ignition timing advance for #1 cylinder also remains fixed

at the same 16 degrees BTDC even after the increase. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, and ignition timing advance readings remained unchanged even though the engine speed was increased. Mr. Koch testified that these readings are possible for normal engine operation and the discrepancies in the OIS Test Data prove the OIS DAD was not connected to the 2004 Highlander, which respondent Danial certified as smog test compliance. Respondent Danial fraudulently certified this vehicle.

25. Two days before this test, on April 11, 2023, respondent Danial performed a smog test on the 2004 Highlander. The Highlander failed the test for incomplete OBDII readiness monitors.

2001 GMC NEW SIERRA (#3) (RESPONDENT DANIAL)

26. On April 21, 2023, respondent Danial tested and issued a Certificate of Compliance for a 2001 GMC New Sierra C1500.

27. The dynamic data for this vehicle shows that after the engine speed was increased during the functional portion of the test, the throttle remained fixed at the same opening both before and after the RPM increase, and the MAF and MAP readings also remained fixed at the same levels as before and after the RPM increase, and the ignition timing advance for the #1 cylinder is also still fixed at the same 19 degrees BTDC both before and after the RPM increase.

28. Mr. Koch testified that these discrepancies in the OIS Test Data show that the OIS DAD was not connected to the 2001 New Sierra, which respondent Danial certified as smog test compliant. Respondent Danial fraudulently certified this vehicle.

29. Mr. Koch noted that respondent Danial previously failed inspection for the New Sierra on April 15, 2023, and another station failed the vehicle on January 9, 2023.

2003 TOYOTA CAMRY (#4) (ROGERS)

30. On July 31, 2023, Mr. Rogers issued a Certificate of Compliance for a 2003 Toyota Camry LE.

31. The dynamic data this vehicle shows that after the RPM was increased during the functional part of the exam, the throttle remained fixed at the same opening as before the RPM increase, the MAF remained fixed at the same reading as before the RPM increase, and the ignition timing advance for the #1 cylinder was fixed at the same 15 degrees BTDC as before the RPM increase. Mr. Koch testified again that these readings are not possible for normal engine operation and represent discrepancies in the OIS Test Data that show the OIS DAD was not connected to the 2003 Camry which Mr. Rogers certified as smog test compliant.

32. Mr. Rogers performed a smog inspection on the Camry on July 27, 2023, which the Camry failed. Mr. Rogers fraudulently certified this vehicle.

2001 NISSAN XTERRA (#5) (ROGERS)

33. On September 12, 2023, Mr. Rogers tested a 2001 Nissan Xterra and issued a Certificate of Compliance for this vehicle.

34. The dynamic data for the 2001 Xterra show that after the RPM on the car was increased during the functional portion of the test, the throttle remained fixed as it did before the RPM increase, the MAF remained fixed at the same reading as before the RPM increase, and the ignition timing advance for the #1 cylinder remained fixed

at 10 degrees BTDC, the same degree as before the RPM increase. Mr. Koch testified that these readings are not possible for normal engine operation and represent discrepancies in the OIS Test Data that show the OIS DAD was not connected to the 2001 Xterra, which Mr. Rogers certified as smog test compliant.

35. On September 7, 2023, Mr. Rogers performed a smog test on the Xterra, which the vehicle failed. Mr. Rogers fraudulently certified this vehicle.

2004 TOYOTA TUNDRA (#6) (ROGERS)

36. On September 14, 2023, Mr. Rogers tested a 2004 Toyota Tundra Double Cab Limited and issued a Certificate of Compliance for this vehicle.

37. The dynamic data for the Tundra shows that after the vehicle's RPM was increased, the throttle remained fixed at the same opening level as before the RPM increase, the MAF also remained fixed at the same reading as before the RPM increase, and the ignition timing advance for the #1 cylinder remained fixed at 11 degrees BTDC. Mr. Koch testified that these readings are not possible for normal engine operation and represent discrepancies in the OIS Test Data that show the OIS DAD was not connected to the 2004 Tundra, which Mr. Rogers certified as smog test compliant. Mr. Rogers fraudulently certified this vehicle.

2004 NISSAN MURANO (#7) (RESPONDENT DANIAL)

38. On November 6, 2023, respondent Danial issued a Certificate of Compliance for a 2004 Nissan Murano SL.

39. The vehicle's dynamic data shows that after the RPM was increased during the functional portion of the test, the throttle remained fixed at the same opening level as before the RPM increase, the MAF reading remained fixed at the

same reading as before the RPM increase, and the ignition timing advance for #1 cylinder was fixed at 16 degrees BTDC, the same degree as before the RPM increase. Mr. Koch testified that these readings are not possible for normal engine operation, and are discrepancies in the OIS Test Data that show the OIS DAD was not connected to the 2004 Murano, which respondent Danial certified as smog test compliant. Respondent Danial fraudulently certified this vehicle.

2004 BMW X3 (#8) (RESPONDENT DANIAL)

40. On December 1, 2023, respondent Danial smog tested and passed a 2004 BMW X3.

41. The BMW's dynamic data shows that after the RPM was increased during the functional portion of the smog test, the throttle remained fixed at the same opening prior to the RPM increase, the MAF remained fixed at the same reading as before the RPM increase, and the ignition timing advance for the #1 cylinder was fixed at the same BTDC degree as before the RPM increase. Mr. Koch testified that these readings are not possible for normal engine operation and are discrepancies in the OIS Test Data that show the OIS DAD was not connected to the BMW, which respondent Danial certified as smog test compliant. Respondent Danial fraudulently certified this vehicle.

2000 FORD MUSTANG (#9) (ROGERS)

42. On January 26, 2024, Mr. Rogers tested and issued a Certificate of Compliance for a 2000 Ford Mustang.

43. The Mustang's dynamic data shows that after the RPM was increased during the functional part of the smog test, the throttle was fixed at the same opening

level as before the RPM increase, the MAF remained fixed at the same reading as before the RPM increase, and the ignition timing advance for the #1 cylinder remained fixed at 18 degrees BTDC, the same degree as before the RPM increase. Mr. Koch testified that these readings are not possible for normal engine operation, and these discrepancies in the OIS Test Data show that the OIS DAD was not connected to the 2000 Mustang, which Mr. Rogers certified as smog check compliant. Mr. Rogers fraudulently certified this vehicle.

2002 MITSUBISHI LANCER (#10) (ROGERS)

44. On February 5, 2024, Mr. Rogers tested and issued a Certificate of Compliance for a 2002 Mitsubishi Lancer.

45. The Lancer's dynamic data shows that the throttle remained fixed at the same opening level as before the RPM increase, the MAF remained fixed at the same reading level as before the RPM increase, and the ignition timing advance for the #1 cylinder remained fixed at eight degrees BTDC, the same degree as before the RPM increase. Mr. Koch testified that these readings are not possible for normal engine operation and represent discrepancies in the OIS Test Data that show the OIS DAD was not connected to the 2002 Lancer, which Mr. Rogers certified as smog test compliant. Mr. Rogers fraudulently certified this vehicle.

Respondent Danial's Testimony

46. Respondent Danial denied that he clean plugged or inspected the vehicles. He testified that he was working at the liquor store part of the station when the inspections occurred. Respondent Danial was not able to explain, however, how someone else was able to obtain his unique password to access the EIS program to perform the inspections, or how someone was able to access this system using his

palm print for the cars inspected after May 1, 2023, the date palm prints started to be required to log on to the EIS program.

Evaluation

47. Complainant bears the burden of proving the allegations in the Accusation by a preponderance of the evidence. He alleges that on 10 occasions, respondent Danial and Mr. Rogers clean plugged the 10 vehicles identified and issued passing certificates to these vehicles that should not have passed smog check inspections. Respondent Danial's testimony that he did not perform the fraudulent inspections is not credible. To access the smog testing electronic inspection system respondent's Danial's individual password or palm print needed to be used. He could not explain how some other person was able to access the smog electronic inspection system using his personal information. Respondent Danial's and Mr. Rogers's conduct is attributable to respondent Ainessey Smog as their employer and because respondent Ainessey Smog should have known about the clean plugging by the reasonable exercise of care and oversight of its employees. The violations of the Smog Check Program respondent Danial and Mr. Rogers committed occurred during the performance of their duties and are attributable to respondent Ainessey. [(See *Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192.) ("If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of his agents or employees done in the course of his business in the operation of the license.")]

48. Consequently, respondent Ainessey's Smog's Smog Station license and ARD registration, and respondent Danial's Smog inspector license are subject to

discipline for violations of the Motor Vehicle Inspection Program, failure to follow regulations, and dishonesty, fraud, or deceit.

Costs

49. The Bureau may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 125.3, subd. (a).) Complainant here incurred a total of \$2,447.52 and \$540.40 in investigation costs. These are supported by Declarations of Mr. Koch and Raymond Gottenbos, dated December 12, and 18, 2024, respectively, which are accompanied by a spreadsheet describing the general tasks performed by Mr. Koch and Mr. Gottenbos, the time spent on each task, and the method of calculating the costs.

50. Complainant also incurred a total of \$8,608.50 in enforcement costs. The enforcement costs are supported by a Certification of Prosecution Costs: Mr. Aronis's Declaration dated December 18, 2025, and documents describing the general tasks performed, the time spent on each task, and the method of calculating the costs.

51. Accordingly, the total reasonable investigation and enforcement costs are \$11,596.42 (\$8,608.50 plus \$2,447.52 and \$540.40).

LEGAL CONCLUSIONS

1. "Protection of the public shall be the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 9880.3.)

Burden and Standard of Proof

2. Complainant has the burden of proving the violations alleged in the Accusation. The applicable standard of proof is preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.)

Causes for Discipline

3. Complainant established by a preponderance of the evidence that respondent Ainessey Smog violated Business and Professions Code section 9884.7, subdivision (a)(1), under the First Cause for Discipline. Respondent Danial and Mr. Rogers clean-plugged 10 vehicles and falsely certified that these vehicles passed smog inspections and were in compliance with applicable laws and regulations under Health and Safety Code section 44012. Respondent Ainessey Smog should have known by the exercise of reasonable care that the certifications respondent Danial and Mr. Rogers issued were false and untrue.

4. Complainant established by a preponderance of the evidence that respondent Ainessey Smog violated Business and Professions Code section 9884.7, subdivision (a)(4), under the Second Cause for Discipline. Respondent's employees Danial and Rogers committed fraud when they certified that 10 vehicles passed smog inspections and were in compliance with applicable laws and regulations when they clean plugged the 10 vehicles discussed above and issued smog certificates of compliance and did not test or inspect the vehicles as required under Health and Safety Code section 44012. Respondent Ainessey Smog should have known these certifications were fraudulent by the exercise of reasonable care as found under the First Cause for Discipline.

5. Complainant established under the Third and Fourth Causes for Discipline by a preponderance of the evidence that pursuant to Health and Safety sections 44072.2, subdivision (a), and 44072.10 subdivision (c), respondent Ainessey Smog failed to test the 10 vehicles identified at respondent Ainessey Smog as required under sections 44012 and 44015 and California Code of Regulations, title 16, sections 3340.35, subdivision (c), and 3340.42. These authorities detail the procedures smog check inspectors must follow when testing vehicles. By clean plugging these 10 vehicles respondent Danial and Mr. Rogers did not perform the inspections these authorities required that they perform. Because these violations of the Smog Check Program occurred during the performance of their duties at Ainessey Smog, their conduct is attributable to respondent Ainessey Smog. (See *Arenstein v. California State Bd. of Pharmacy, supra*.)

6. Complainant did not establish by a preponderance of the evidence that respondent violated Health and Safety section 44072.2, subdivision (d), under the Fifth Cause for Discipline. This section requires that a licensee is subject to discipline who "commits any act involving dishonesty, fraud, or deceit whereby another is injured." The evidence of record does not show that respondent Ainessey Smog had actual knowledge that employees at the station committed fraud or participated in the fraudulent certifications as alleged in the Fifth Cause for Discipline.

7. Complainant established by a preponderance of the evidence under the Sixth Cause for Discipline that respondent Danial's smog check inspector license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), because, as found above, he failed to perform smog check inspections as required by section 44012.

8. Complainant established by a preponderance of the evidence that pursuant to Health and Safety sections 44072.2, subdivision (c), respondent Danial failed to comply with sections 44012 and 44015 and California Code of Regulations, title 16, sections 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42, under the Seventh Cause for Discipline. Respondent Danial failed to perform inspections as required under section 44012, he entered false information in the EIS, and he failed to conduct required smog tests in accordance with the Bureau's specifications.

9. Complainant established by a preponderance of the evidence under the Eighth Cause for Discipline that pursuant to sections 44072.2, subdivision (d), and 44072.10, subdivision (c), respondent Danial committed acts involving dishonesty, fraud or deceit by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on these vehicles. His failure to perform bona fide inspections deprived the public of the protection afforded by the Motor Vehicle Inspection Program.

Evaluation of Degree of Discipline to Impose

10. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, the Bureau must consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Re. June 2021] (guidelines). The guidelines provide the recommended discipline for various violations. The recommended discipline for a violation of Health and Safety Code section 44032 is five years' probation. The recommended discipline for a violation of Health and Safety Code section 44072.2, subdivision (c), is two years' probation. The recommended discipline for a violation of Health and Safety Code section 44072.10, subdivision (c), is revocation.

11. In determining the appropriate discipline to impose, the guidelines also set forth various factors in aggravation and mitigation to consider. Relevant factors in aggravation include: (1) prior warnings from the Bureau; (2) prior history of citations; (3) prior history of formal disciplinary action; and (4) evidence that the unlawful act was a pattern of practice. Relevant factors in mitigation include: (1) evidence of voluntary participation in retraining; (2) absence of prior disciplinary action; and (3) evidence that the violation was not part of a pattern or practice.

12. Respondent Danial has been licensed for over 10 years. He has no prior disciplinary record. However, he fraudulently issued Smog Check certificates to five vehicles and thus deprived the public of the intended benefits of the Smog Inspection Program. His testimony that he did not perform these inspections as found above was not believable. Respondent Danial offered no evidence to allow for a departure from the guidelines' recommended discipline of revocation of his smog inspection license for a violation of Health and Safety Code section 44072.10, subdivision (c).

13. With respect to respondent Ainessey Smog, because Ainessey Smog did not appear at this hearing there is no reason to depart from the recommended discipline of revocation with regard to respondent Ainessey's Smog Check Test-Only Station License. With this noted, respondent Ainessey's ARD registration is not revoked pursuant to Section 9884.7.² No evidence was offered that respondent Ainessey Smog participated in the fraudulent smog certifications. Thus, it would be inequitable to revoke respondent Ainessey's ARD registration in addition to Ainessey's Smog Station

² Section 44002 provides that the Bureau has all the powers and authority granted under the Automotive Repair Act (Bus. & Prof. §§ 9880 to 9889.68) for enforcing the Motor Vehicle Inspection Program.

license. Revocation of respondent Ainessey Smog's Smog Station license is sufficient to protect the public.

Assessment of Costs

14. The Bureau may obtain its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 125.3, subd. (a).) In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court identified specific factors to determine the reasonableness of the costs. These factors include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith 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 in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

15. Complainant incurred a total of \$11,596.42 in investigation and enforcement costs. However, with regard to respondent Ainessey Smog, a 20 percent reduction in the amount of \$2,319.28 is warranted because complainant did not prove one of the five causes for discipline against respondent Ainessey Smog. Costs are thus reduced from \$11,596.42 to \$9,277.14.

16. Respondent Danial did not colorably challenge the proposed discipline, or that he is unable to pay the Board's costs. With this noted, respondent Danial was responsible for five of the 10 clean plugged vehicles and, thus, it is not appropriate to require him to pay the entirety of the Bureau's costs.

17. To equitably split the costs between respondent Ainessey Smog and respondent Danial, the total sum of \$9,277.14 is divided into one third amounts:


Respondent Ainessey is responsible for two thirds of the total costs of enforcement in the amount of \$6,184.77 (the total amount being \$9,277.14) due to respondent Danial's and Mr. Rogers's conduct.

Respondent Daniel is responsible for one third of the \$9,277.14, or \$3,092.37.

ORDER

1. Smog Check Test-Only Station License Number TC 291206 issued to respondent Yessenia Martinez Rodriguez, d.b.a. Ainessey Smog, is revoked.
2. Smog Check Inspector License Number EO 638012 issued to respondent John Danial is revoked.
3. Respondent Yessenia Martinez Rodriguez, d.b.a. Ainessey Smog, is ordered to pay the Bureau's investigative and enforcement costs in the amount of \$6,184.77.
4. Respondent John Danial is ordered to pay the Bureau's investigative and enforcement costs in the amount of \$3,092.37.

DATE: January 26, 2026


[Abraham M. Levy \(Jan 26, 2026 14:44:19 PST\)](#)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings