

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

In the Matter of the Accusation Against:

OSCAR MOYA, dba SO CAL SMOG

18156 Valley Blvd. Unit #10

Bloomington, CA 92316

Mailing Address:

6070 Chester St.

Riverside, CA 92504

Automotive Repair Dealer Registration No. ARD 295794

Smog Check Test Only Station License No. TC 295794

and

OSCAR MOYA

18156 Valley Blvd. Unit #10

Bloomington, CA 92316

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Mailing Address:

8220 Sonia Ct.

Hesperia, CA 92345

Smog Check Inspector License No. EO 631368

Respondents.

Case No. 79/24-785

OAH No. 2025041192

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 January 29, 2026.

IT IS SO ORDERED December 23, 2025.

Original signature on file
GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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Respondents.

Agency No. 79/24-785

OAH No. 2025041192

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on November 3, 2025.

Kevin J. Rigley, Deputy Attorney General, represented complainant.

Nicole Weil, Attorney, represented respondents.

The record closed and the matter was submitted for decision at the conclusion of the hearing.

SUMMARY

Complainant established by a preponderance of the evidence that, over the span of approximately 12 months, the illegal method of clean plugging was used to perform smog check inspections on 11 vehicles at respondents' smog check station. All but one of the 11 inspections were performed by respondents' two employees; the other inspection was performed by respondent Oscar Moya. Respondents' denials of clean plugging and various explanations for the anomalous test data generated during the 11 suspect inspections were not persuasive. Revocation of respondents' smog check and station licensing rights is mandated by Health and Safety Code section 44072.10. In light of the pattern and practice of illegal activity, discretionary revocation of respondents' automotive repair dealer registration is warranted. Respondents also are ordered to pay costs, but only if and when their licensing rights are reinstated.

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FACTUAL FINDINGS

Parties and Jurisdiction

COMPLAINANT

1. Complainant is Patrick Dorais, the Chief of the Bureau of Automotive Repair (Bureau), which is within the California Department of Consumer Affairs (Department). (Ex. 1.)

RESPONDENTS

2. On October 31, 2019, the Bureau issued Automotive Repair Dealer Registration Number ARD 295794 to Oscar Moya, doing business as So Cal Smog (respondent So Cal Smog). The Automotive Repair Dealer Registration was in effect at all times relevant and will expire on October 31, 2027, unless renewed. (Testimony [Test.] of Moya; Exs. 2, 2A.)

3. On November 21, 2019, the Bureau issued Smog Check Station License Number TC 295794 to respondent So Cal Smog. The Smog Check Station License was in effect at all times relevant and will expire on October 31, 2027, unless renewed. (Test. of Moya; Exs. 2, 2A.)

4. On October 25, 2013, the Bureau issued Smog Check Inspector License Number EO 631368 to Oscar Moya (respondent Moya). The Smog Check Inspector License was in effect at all times relevant and will expire on October 31, 2026, unless renewed. (Test. of Moya; Exs. 2, 2A.)

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5. On October 25, 2013, the Bureau issued Smog Check Repair Technician License Number EI 631368 to respondent Moya. The Smog Check Repair Technician License expired on October 31, 2015, and has not been renewed. (Exs. 2, 2A.)

PLEADINGS

6. On February 12, 2025, complainant filed the Accusation against respondents in his official capacity. In it, complainant alleges that respondent Moya and two employees “clean plugged” 11 vehicles to illegally pass smog check inspections. (Ex. 1.)

7. On April 10, 2025, respondents filed a Notice of Defense, requesting a hearing to challenge the allegations of the Accusation. (Ex. 1.)

RESPONDENTS’ FORMER EMPLOYEES

8. As discussed in more detail below, all but one of the 11 smog check inspections involved in this case involved two former employees, Asjad Ali Bhatti and Alex Urzua, who were fired by respondents after the events in question. (Test. of Moya.)

9. On September 19, 2019, the Bureau issued Smog Check Inspector License Number EO 642237 to Mr. Bhatti. The Smog Check Inspector License was in effect at all times relevant and was set to expire on May 31, 2025. However, on February 2, 2024, Mr. Bhatti’s license was revoked by the Bureau in a decision made effective February 2, 2024. (Exs. 2A, 3, B.)

10. On September 20, 2016, the Bureau issued Smog Check Inspector License Number EO 639699 to Mr. Urzua. The Smog Check Inspector License was in effect at all times relevant and was set to expire on December 31, 2024. However, Mr. Urzua’s

license was revoked by the Bureau in a decision made effective June 21, 2024. (Exs. 2A, 4, C.)

11. On September 19, 2016, the Bureau also issued Smog Check Repair Technician License Number EI 639699 to Mr. Urzua. The Smog Check Repair Technician License was in effect at all times relevant and was set to expire on December 31, 2024. However, Mr. Urzua's license also was revoked by the Bureau in the decision made effective June 21, 2024. (Exs. 2A, 4, C.)

12. Messrs. Bhatti and Urzua's revocations involved misconduct unrelated to this case. (Test. of Moya; Exs B, C.)

Respondents' Relevant Background Information

13. Respondent Moya is the owner/operator of respondent So Cal Smog. He also does smog check inspections there. (Test. of Moya.)

14. Respondents have no prior record of discipline with the Bureau. (Test. of Moya; Exs. 2, 2A.)

15. Respondent Moya hired Mr. Bhatti as a smog check inspector in or around June 2022. Respondent Moya fired Mr. Bhatti in early 2024 when he discovered Mr. Bhatti's license had been revoked. (Test. of Moya; Ex. A.)

16. Respondent Moya hired Mr. Urzua as a smog check inspector in January 2023. Respondent Moya found Mr. Urzua's work and attendance unreliable, so he researched Mr. Urzua's license history on the Bureau's website. He discovered the unrelated disciplinary case against Mr. Urzua. Respondent Moya fired Mr. Urzua in May 2023. (Test. of Moya; Ex. A.)

17. Respondent So Cal Smog also is certified as a STAR station. The certification was issued on September 21, 2022, but was suspended on September 3, 2025. (Ex. 2A.) The Follow-Up Pass Rate (FPR) is a metric used to evaluate the performance of smog check inspectors participating in the STAR program. Respondent Moya admits his FPR Summary score of 0.06 is low. (Test. of Moya; Ex. A.)

The Smog Check Program

18. California's Smog Check Program requires the owners of most motor vehicles in the state to subject their vehicles to and pass a smog check inspection and receive a certificate of compliance every two years when renewing their registration or when the vehicle's title is transferred. These inspections are performed by smog check inspectors at smog check stations, both of which are licensed by the Bureau. The Smog Check Program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. (Ex. 6, pp. A75-78.)

19. The smog check inspection in certain "enhanced" areas of the State is an Acceleration Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known as a BAR-97. (Ex. 6, pp. A75-78.)

20. Among other components of a smog check inspection, an On-Board Diagnostics (OBD-II) functional test is performed on most 1996 to 1999 model year vehicles. The inspector is required to connect a test cable from the EIS to a Diagnostic Link Connector (DLC) which is located in the vehicle's passenger compartment. Through the DLC, the EIS retrieves information from the vehicle's on-board computer about its ability to communicate, the status of the inspection and maintenance (I/M) readiness monitors, the malfunction indicator light (MIL) command, and diagnostic trouble codes (DTC). (Ex. 6, pp. A75-78.)

21. The EIS is connected to BAR's Vehicle Information Database (VID). If the vehicle passes the overall inspection, a certificate of compliance is issued and transmitted electronically to the VID. All data gathered during a smog check inspection, regardless of the type of inspection, is transmitted to and retained in the VID. (Ex. 6, pp. A75-78.)

22. Beginning on March 9, 2015, the Smog Check Program was updated to keep pace with advancing vehicle technology. The program update requires 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, and 1998 and newer diesel vehicles subject to the program. The system consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer. (Ex. 6, pp. A75-78.)

23. The DAD is an On-Board Diagnostic (OBD) scan tool that, when requested by the California BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the California BAR-OIS software and will be retrieved. The DAD connects between the BAR-OIS computer and the vehicle's DLC. The DAD is the only BAR-certified component of the BAR-OIS. The California BAR-OIS software requires a continuous Internet connection when performing a smog check inspection. The BAR-OIS uses the California BAR-OIS software to communicate with the VID through the Internet connection. The bar code scanner is used to input inspector information, the vehicle identification number (VIN), and Department of Motor Vehicles (DMV) 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. (Ex. 6, pp. A75-78.)

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24. Data retrieved, captured and recorded to the VID during a BAR-OIS smog check inspection includes: the electronic vehicle identification number (eVIN), which is the digitally stored VIN programmed into the vehicle's Powertrain Control Module (PCM); the communication protocol, which is the specific "language" the PCM uses to relay or communicate information to scan tools and other computers or devices such as the BAR-OIS; and the number of Parameter Identifications (PIDs), which is the number of specific data values each PCM reports related to emissions controls. (Ex. 6, pp. A75-78.)

25. PIDs are data points reported by the vehicle's on-board computer to a scan tool or BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other input and output values utilized by the vehicle's on-board computer. The PID count is the number of data points reported by the vehicle's on-board computer and is programmed during manufacture. (Ex. 6, pp. A75-78.)

26. The EIS or BAR-OIS, depending on the test type, prints a VIR, which is a physical record of the test results and shows the certificate of compliance number that was issued if the vehicle passed the smog check inspection. The smog check inspector must sign the VIR to indicate that the inspection was performed within the Bureau's guidelines. Licensed smog check inspectors are the only persons authorized by the Bureau to perform official inspections. (Ex. 6, pp. A75-78.)

27. The VID contains registration data from the DMV, plus information on emission standards, vehicle smog check inspections, smog check stations and inspectors, and certificates of compliance. The VID has an internal clock that is set to Pacific Time and records the time and date for each inspection (time stamp). 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 VID receives the smog check results immediately following the inspection. The Bureau can access the VID to view test data on smog check inspections performed at any smog check station, or search for, retrieve, and print a test record for a particular vehicle which has been tested. If a vehicle passes the smog inspection, the vehicle information and test results are electronically transmitted to DMV. (Ex. 6, pp. A75-78.) The VID includes dynamic data transmitted during smog check inspections. In this case, relevant data transmitted during the smog check inspections in question are added to the VIRs for each inspected vehicle under the heading, "Dynamic PID Chart." (Test. of Koch; Ex. 6, pp. A75-78.)

28. The Bureau has become aware of methods some smog check stations and smog check inspectors use to fraudulently issue smog certificates to vehicles that will not pass a smog check test on their own, or in some instances, are not even present during the time the test is performed. These methods are known as "clean piping," "clean plugging," "clean gassing," and "clean tanking." (Test. of Koch; Ex. 6, pp. A75-78.)

29. "Clean plugging" is a method by which another vehicle's properly functioning OBD-II system, or another source, is 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 or not present for testing. (Test. of Koch; Ex. 6, pp. A75-78.)

30. Defeat devices, also known as simulators, attempt to simulate engine operation during a smog check inspection by transmitting to the VID OBD-II data which has been modified or replaced entirely for the purportedly inspected vehicle. The use of a defeat device during a smog check inspection is clean plugging and is strictly prohibited. (Test. of Koch; Ex. 6, pp. A75-78.)

31. During an OIS inspection, engine operating parameters are retrieved from the vehicle's OBD-II system and recorded to the VID. This is accomplished during the functional portion of the OIS smog check inspection by plugging the DAD into the vehicle's DLC when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- Engine speed in revolutions per minute (RPM).
- Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. TPS is measured in a percentage of opening from 0 percent at idle and near or up to 100 percent at full throttle.
- Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilopascals (kpa). Typical readings for a normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25 kpa to 45 kpa at idle, and 101 kpa at full throttle, which is the same as atmospheric pressure at sea level.
- Mass air flow (MAF) as measured by a MAF sensor mounted in the engine's air intake tract. MAF is measured in grams per second (gps).
- Ignition timing is set by the vehicle PCM based on engine speed and load, and is measured in degrees Before Top Dead Center (BTDC).

(Test. of Koch; Ex. 6, pp. A75-78.)

32. 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 0 percent. The MAP and/or MAF readings are also steady. For the engine speed to increase, the throttle is 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. An increase in throttle, measured by the TPS, which increases engine RPM, would result in corresponding increases in MAF and 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. (Test. of Koch; Ex. 6, pp. A75-78.)

33. During an OIS smog check inspection, 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. (Test. of Koch; Ex. 6, pp. A75-78.)

34. The increase in engine speed is performed by the inspector stepping on the throttle pedal or manually opening the throttle, resulting in a corresponding increase in engine RPM by allowing an increase in airflow into the engine. (Test. of Koch; Ex. 6, pp. A75-78.)

The Bureau's Prior Contact with Respondents

35. On June 3, 2022, Bureau Program Representative Nick Magaña (PR Magaña) visited respondent So Cal Smog's station after respondent Moya advised the Bureau that the station's DAD had "locked out" (or disconnected from the system) after smog testing a vehicle. PR Magaña met respondent Moya, inspected the station, and unlocked the DAD. PR Magaña documented various observed equipment deficiencies and a list of corrections to be made. PR Magaña also instructed respondent Moya to perform complete and accurate smog check inspections in accordance with all laws, regulations, the Smog Check Inspection Manual, and analyzer

screen prompts. PR Magaña completed a station inspection report documenting the above. (Test. of Koch, Moya; Ex. 7.)

36. On July 29, 2022, PR Magaña conducted a follow-up inspection of respondent So Cal Smog's station to confirm remediation of the previous equipment deficiencies. PR Magaña met respondent Moya as well as Mr. Bhatti. PR Magaña again documented station paperwork deficiencies, ordered corrections, and instructed respondent Moya and Mr. Bhatti to perform complete and accurate smog check inspections in accordance with all laws, regulations, the Smog Check Inspection Manual, and analyzer screen prompts. PR Magaña completed a station inspection report documenting the deficiencies. (Test. of Koch, Moya; Ex. 8.)

The Bureau's Investigation

37. On or about January 3, 2024, PR Steve Koch reviewed data from respondent So Cal Smog's smog check inspections in 2022 and 2023. The review showed a pattern of vehicles being certified with improbable engine operating parameters not corresponding to normal engine operation. PR Koch found the reports from PR Magaña's prior contacts with respondents, which indicated to PR Koch that the station's DAD had been locked out due to anomalous data being transmitted during smog check inspections. (Test. of Koch; Ex. 6, p. A78-80.)

38. Upon further inquiry, PR Koch found 11 smog check inspections from which the vehicles were issued certificates of compliance, but the data collected by the DAD during the OBD-II functional test indicated to him that a defeat device or simulator had been used instead of the actual vehicle being tested, i.e., clean plugging. (Test. of Koch; Ex. 6, p. A78-80.) The 11 smog check inspections are discussed in detail below.

INSPECTION # 1 (URZUA)

39. On February 2, 2023, a 2004 Nissan Frontier Crew Cab XE V6 (2004 Frontier) was tested and a certificate of compliance was issued by Mr. Urzua. (Exs. 9, 6, pp. A80-86.) By this time, Mr. Urzua had been working for respondents about one month.

40. The Dynamic PID Chart for the 2004 Frontier shows that between time stamps 159 and 19773 engine speed was steady at approximately 700 RPM. During this time the throttle was fixed at 0 percent opening, the MAF was fixed at 4.53 gps, and the ignition timing advance for cylinder number 1 was fixed at 10 degrees BTDC. The engine speed accelerated to approximately 1,700 RPM between time stamps 21653 and 24005. The engine speed accelerated to approximately 2,300 RPM at time stamp 28867. The engine speed then dropped to approximately 1,950 RPM at time stamp 37096. From the time the engine RPM increased after idling to the higher RPM's, the throttle, timing, and sensor readings remained unchanged. (Exs. 9, 6, pp. A80-86.)

INSPECTION # 2 (URZUA)

41. On February 3, 2023, a 2001 Dodge RAM 1500 (2001 RAM) was tested and a certificate of compliance was issued by Mr. Urzua. (Exs. 10, 6, pp. A80-86.)

42. The Dynamic PID Chart for the 2001 RAM shows that between time stamps 164 and 16898 engine speed was steady at approximately 650 RPM. During this time the throttle was fixed at 13.3 percent opening, the MAP was fixed at 31 kpa, and the ignition timing advance for cylinder number 1 was fixed at 18 degrees BTDC. After time stamp 16898, the engine speed accelerated to approximately 2,150 RPM.

From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 10, 6, pp. A80-86.)

INSPECTION #3 (BHATTI)

43. On February 10, 2023, a 2003 Lexus IS 300 (2003 IS 300) was tested and a certificate of compliance was issued by Mr. Bhatti. (Exs. 11, 6, pp. A80-86.)

44. The Dynamic PID Chart for the 2003 IS 300 shows that between time stamps 187 and 17085 engine speed was steady at approximately 750 RPM. During this time the throttle was fixed at 14.5 percent opening, the MAF was fixed at 2.18 gps, and the ignition timing advance for cylinder number 1 was fixed at 9 degrees BTDC. After time stamp 17085, the engine speed accelerated to approximately 2,150 RPM. From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 11, 6, pp. A80-86.)

INSPECTION #4 (BHATTI)

45. On February 13, 2023, a 2004 Nissan Quest S (2004 Quest) was tested and a certificate of compliance was issued by Mr. Bhatti. (Exs. 12, 6, pp. A80-86.)

46. The Dynamic PID Chart for the 2004 Quest shows that between time stamps 124 and 19436 engine speed was steady at approximately 700 RPM. During this time the throttle was fixed at .8 percent opening, the MAF was fixed at 3.32 gps, and the ignition timing advance for cylinder number 1 was fixed at 15 degrees BTDC. After time stamp 19436, the engine speed accelerated to approximately 1,950 RPM. From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 12, 6, pp. A80-86.)

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INSPECTION #5 (BHATTI)

47. On February 15, 2023, a 2000 Honda Civic EX (2000 Civic) was tested and a certificate of compliance was issued by Mr. Bhatti. (Exs. 13, 6, pp. A80-86.)

48. The Dynamic PID Chart for the 2000 Civic shows that between time stamps 184 and 20883 engine speed was steady at approximately 725 RPM. During this time the throttle was fixed at 9.4 percent opening, the MAP was fixed at 26 kpa, and the ignition timing advance for cylinder number 1 was fixed at 15.5 degrees BTDC. After time stamp 20883, the engine speed accelerated to approximately 1,850 RPM at time stamp 25182, then dropped to approximately 1,600 RPM before accelerating to approximately 2,175 RPM at time stamp 33419. From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 13, 6, pp. A80-86.)

INSPECTION #6 (URZUA)

49. On February 18, 2023, a 2004 Toyota Corolla CE (2004 Corolla) was tested and a certificate of compliance was issued by Mr. Urzua. (Exs. 14, 6, pp. A80-86.)

50. The Dynamic PID Chart for the 2004 Corolla shows that between time stamps 143 and 23064 engine speed was steady at approximately 800 RPM. During this time the throttle was fixed at 11.4 percent opening, the MAF was fixed at 3.85 gps, and the ignition timing advance for cylinder number 1 was fixed at 14.5 degrees BTDC. The engine speed fluctuated from 2,250 RPM and 1,500 RPM between time stamps 24964 and 39897. From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 14, 6, pp. A80-86.)

INSPECTION #7 (URZUA)

51. On February 18, 2023, a 2000 Honda Accord SE (2000 Accord) was tested and a certificate of compliance was issued by Mr. Urzua. (Exs. 15, 6, pp. A80-86.)

52. The Dynamic PID Chart for the 2000 Accord shows that between time stamps 155 and 37840 engine speed was steady at approximately 700 RPM. During this time the throttle was fixed at 9.8 percent opening, the MAP was fixed at 25 kpa, and the ignition timing advance for cylinder number 1 was fixed at 11 degrees BTDC. After time stamp 37840, the engine speed accelerated to approximately 1,900 RPM before dropping to approximately 1,650 RPM. From the time the RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 15, 6, pp. A80-86.)

INSPECTION #8 (BHATTI)

53. On February 20, 2023, a 2002 Toyota Camry LE (2002 Camry) was tested and a certificate of compliance was issued by Mr. Bhatti. (Exs. 16, 6, pp. A80-86.)

54. The Dynamic PID Chart for the 2002 Camry shows that between time stamps 142 and 34064 engine speed was steady at approximately 675 RPM. During this time the throttle was fixed at 14.5 percent opening, the MAF was fixed at 2.75 gps, and the ignition timing advance for cylinder number 1 was fixed at 19.5 degrees BTDC. After time stamp 34064, the engine speed accelerated to approximately 1,950 RPM. From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 16, 6, pp. A80-86.)

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INSPECTION #9 (BHATTI)

55. On February 21, 2023, a 2000 Toyota Corolla VE (2000 Corolla) was tested and a certificate of compliance was issued by Mr. Bhatti. (Exs. 17, 6, pp. A80-86.)

56. The Dynamic PID Chart for the 2000 Corolla shows that between time stamps 171 and 19024 engine speed was steady at approximately 750 RPM. During this time the throttle was fixed at 10.2 percent opening, the MAF was fixed at 1.82 gps, and the ignition timing advance for cylinder number 1 was fixed at 14 degrees BTDC. After time stamp 19393, the engine speed accelerated to approximately 2,200 RPM, then dropped to approximately 1,700 RPM at time stamp 37045. From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 17, 6, pp. A80-86.)

INSPECTION #10 (RESPONDENT MOYA)

57. On November 7, 2023, a 2000 Dodge Durango 5.9L (2000 Durango) was tested and a certificate of compliance was issued by respondent Moya. (Exs. 18, 6, pp. A80-86.) This is the only suspect smog check inspection conducted by respondent Moya out of the 11 inspections in question.

58. The Dynamic PID Chart for the 2000 Durango shows that between time stamps 154 and 15700 engine speed was steady at approximately 650 RPM. During this time the throttle was fixed at 10.6 percent opening, the MAP was fixed at 34 kpa, and the ignition timing advance for cylinder number 1 was fixed at 18.5 degrees BTDC. After time stamp 15700, the engine speed accelerated to approximately 1,325 RPM. From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 18, 6, pp. A80-86.)

INSPECTION # 11 (BHATTI)

59. On January 9, 2024, a 2002 Subaru Impreza WRX (2002 Impreza) was tested and a certificate of compliance was issued by Mr. Bhatti. (Exs. 19, 6, pp. A80-86.)

60. The Dynamic PID Chart for the 2002 Impreza shows that between time stamps 132 and 17027 engine speed fluctuated between approximately 650 RPM and 875 RPM. During this time the throttle was fixed at 0 percent opening, the MAF was fixed at 4.25 gps, the MAP was fixed at 39 kpa, and the ignition timing advance for cylinder number 1 was fixed at 8.5 degrees BTDC. After time stamp 17027, the engine speed accelerated to approximately 1,325 RPM. From the time the engine RPM increased after idling to the higher RPMs, the throttle, timing, and sensor readings remained unchanged. (Exs. 19, 6, pp. A80-86.)

THE INVESTIGATOR'S CONCLUSIONS

61. The following pattern was the same for all 11 vehicles. During the entire period the dynamic data was collected, the only parameter that changed was engine RPM. The throttle position, MAF, MAP, and ignition timing advance readings remained unchanged, even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. A substantial increase in RPM should have resulted in a change of the outputs of the vehicles' sensors and timing, yet the sensor and timing data for all 11 vehicles did not change. That data would not have been created on any running vehicle that could properly pass a smog check inspection. (Test. of Koch; Ex. 6.)

62. In PR Koch's experience, a defeat device or simulator that can be purchased on the black market is the only explanation for this kind of anomalous data

being transmitted. Therefore, PR Koch is confident that all 11 vehicles were clean plugged. (Test. of Koch; Ex. 6.)

Findings Based on Respondents' Evidence

63. Respondent Moya testified that he expected Messrs. Bhatti and Urzua to conduct legal smog check inspections in accordance with the Smog Check Inspection Manual. Respondent Moya denied ever using a simulator, telling his employees they could use a simulator, or seeing a simulator on the premises. Respondent Moya testified he would have terminated either employee immediately if he saw either using a simulator.

64. Respondent Moya testified he could not recall being present at the station when any of the 10 other suspect smog check inspections were performed. However, PR Koch established through his credible testimony and supporting documentation that, on January 9, 2024, when Mr. Bhatti performed the smog check inspection on the 2002 Impreza (inspection no. 11), respondent Moya had performed a smog check inspection on a 2009 Honda 15 minutes before Mr. Bhatti's suspect inspection. (Test. of Koch; Ex. 25.) PR Koch also established that Mr. Bhatti performed another smog check inspection 15 minutes later (not under suspicion), followed by respondent Moya performing another smog check inspection 20 minutes after Mr. Bhatti's. (*Ibid.*) Thus, it was established by a preponderance of the evidence that respondent Moya was present at the station before, during, and after Mr. Bhatti's suspect smog check inspection on the 2002 Impreza.

65. Respondent Moya has not hired anyone to replace Messrs. Bhatti or Urzua. He testified that if he decides to hire anyone in the future, he will more carefully interview prospective new hires, provide those hired with a checklist of standards and

training, and monitor their activity, including placing a camera(s) in the shop where the smog check inspections are performed.

66. Respondent Moya believes some of the anomalous data involved in the 11 suspect inspections were the result of a faulty cable he discovered in the station in May 2023. The cable was connected to the DAD, which was connected to the vehicles being tested. Respondent Moya testified that because of the cable problem he "could not get communication sometimes" with the VID for some vehicles. When that happened, the "machine would stop reading at a certain point." Respondent Moya purchased a new cable to replace the faulty one as soon as he discovered the problem. (Test. of Moya; Exs. D.)

67. Respondent Moya also experienced cable connection problems in July 2023. On July 7, 2023, a service repair worker replaced the cable and tested the system to confirm it was working properly. (Test. of Moya; Ex. E.)

68. Respondent Moya failed to establish by a preponderance of the evidence that these two cable problems caused the anomalous data transmitted during the 11 suspect inspections. None of the 11 inspections occurred in May or July 2023, when the cable problems were discovered and repaired. Nine of the suspect inspections happened months before the May 2023 cable problem; the last two happened months after the July 2023 cable problem. Moreover, PR Koch established by his credible testimony that the cable connection problems would result in no data being transmitted from respondents' station. PR Koch's testimony was corroborated by respondent Moya's testimony that the cable problems caused him to lose connection with the system. However, in all 11 of the suspected inspections, data was continuously transmitted to the system. The fact that the data being transmitted was

on a flatline meant the data was not changing, not that the data was not being transmitted.

69. The only suspect inspection performed by respondent Moya was on the 2000 Durango in November 2023. Respondent Moya did not remember that inspection, but his research through the STAR program database shows the vehicle had passed three prior inspections in 2022, 2020, and 2017. According to respondent Moya, this indicates there was no reason to suspect the vehicle would have failed his inspection in November 2023, and thus there was no motive for him to have clean plugged the vehicle during his inspection. (Test. of Moya; Ex. H.)

70. However, other evidence casts doubt concerning the validity of the 2000 Durango testing. For example, the STAR program document respondent Moya submitted (Ex. H) also shows one test in 2012 was "aborted," another test attempted one week before the passed test in 2017 could not be done because the computer "was not ready for testing," and another test in October 2019 (a few months before the passed test in 2020) also could not be done because the computer "was not ready." The fact that three attempted tests were not completed before subsequent passing tests is suspicious. In addition, PR Koch found documentation from the passing test in 2022 showing not only that respondent Moya had conducted the test, but that the dynamic data for that test had the same anomalous flatline data as transmitted during the November 2023 test. This documentation indicates to PR Koch that respondent Moya similarly clean plugged the 2000 Durango when he tested it in 2022. (Test. of Koch; Ex. 22.)

71. Respondent Moya found in his research a technical bulletin from the Mitchell ProDemand publications indicating that the 2000 Durango had a known communication problem with scan tool use, such as a DAD. Respondent Moya believes

that would explain why there was anomalous flatline data transmitted during his 2023 smog check inspection of the 2000 Durango. (Test. of Moya; Ex. I.)

72. PR Koch effectively ruled out the above-described problem as a cause of the anomalous data transmission for the 2000 Durango. His research credibly showed that the communication problem respondent Moya found in his research only applied to 2000 Durangos built before November 1999, but that the 2000 Durango respondent Moya inspected was built in July 2000. (Test. of Koch; Exs. 23-24.)

73. Respondent Moya found a Bureau OBD Test Reference document discussing vehicles with known communication issues during smog check inspections. (Ex. J.) No evidence presented indicates the make/model of any of the 11 vehicles in question is discussed in this bulletin. Respondent Moya also found on the Bureau's website a newsletter from Spring 2020 advising that a vehicle's software can be modified by its owner, which could make the vehicle pollute more than the law allows. (Ex. K.) Respondent Moya testified that he would not know if any of the 11 vehicles in question had software modifications done to them before the smog check inspections. On the other hand, no evidence presented suggests any of the 11 vehicles had modified software.

74. Based on all of the information presented above, respondent Moya opined that the anomalous data transmitted during the 11 smog check inspections in question were the result of the cable problems at his station and the known communication problems disclosed by the Bureau in its public communications.

75. Two positive character reference letters were submitted on respondent Moya's behalf, admitted as administrative hearsay with the limitations set forth in Government Code section 11513, subdivision (d). One letter is from a long-time friend,

Edward Landeros (Ex. F), and the other is from a long-time business associate, Randolph Dotson (Ex. G).

Overall Findings Regarding Clean Plugging Activity

76. The anomalous data transmitted during the 11 smog check inspections in question could not have been created by vehicles that could pass a valid smog check inspection. The credible testimony of PR Koch and the documentation supporting his testimony indicate the 11 vehicles were clean plugged using a simulator.

77. Messrs. Bhatti and Urzua conducted 10 of the 11 suspect smog check inspections. Neither of them appeared at the hearing to explain themselves, and both have had their smog check inspector licenses revoked for unrelated misconduct. While respondent Moya attempted to distance himself from the actions of his two former employees, it was established by a preponderance of the evidence that he was present at least during one of Mr. Bhatti's suspect inspections. More alarming, respondent Moya performed the other of the 11 suspect inspections.

78. None of respondent Moya's defenses or attempts to explain away the anomalous testing data was credible. Some of them were disproven, others were either false or irrelevant. These failed attempts somewhat undercut respondent Moya's overall credibility.

79. Finally, credible evidence strongly suggests respondent Moya was involved in at least one other clean plugging episode, i.e., when he smog checked the 2000 Durango in 2022. Moreover, respondents' DAD was locked out in 2022, which indicated to PR Koch that respondents had transmitted similar anomalous data several months before the first of the 11 suspect smog check inspections.

80. Based on the above, complainant's evidence was more persuasive than respondents', and the weight of the evidence established by a preponderance that all 11 of the suspect inspections were performed using the illegal method of clean plugging, including the smog check inspection of the 2000 Durango conducted by respondent Moya in November 2023.

Costs

81. The Bureau has incurred costs for attorney's fees in the amount of \$10,245.00 billed by the Attorney General's Office for the time spent working on this case. (Ex. 5.) This amount is reasonable given the scope and complexity of this case.

82. Respondent Moya has a wife and three children. He supports his family with the income he generates from his station. He testified that paying the entire costs claimed by complainant would impact him financially. (Test. of Moya.)

LEGAL CONCLUSIONS

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, in this case complainant. (*Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 789 fn. 9.)

2. Because this administrative action does not involve discipline of a professional license, the standard of proof is the preponderance of the evidence, not the clear and convincing standard used for professional licenses. (*Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 916–918.) This is important in this case because although the factual findings

regarding clean plugging activity were established by a preponderance, they would not have been established if the higher clear and convincing standard applied.

3. A 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.)

Governing Law

4. Business and Professions Code section 9884.7, subdivision (a), a provision of the Automotive Repair Act (Chapter 20.3 of the Bus. & Prof. Code) provides that the Director of the Department (Director) may discipline an Automotive Repair Dealer Registration for specified misconduct, where the registrant cannot show there was a bona fide error. (Further undesignated statutory references are to the Business and Professions Code.)

5. The Motor Vehicle Inspection Program, located at Health and Safety Code section 44000 to 44127, is intended to enhance and improve the existing vehicle inspection and maintenance network, and to periodically monitor the performance of the network measured against stated objectives. (Health & Saf. Code, § 44000.)

6. Health and Safety Code section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program. Included in those powers is the authority to discipline a Smog Check Station, Smog Check Inspector, and Smog Check Repair Technician Licenses.

7. Health and Safety Code section 44072.6 provides that the expiration or suspension of a license by operation of law, or by order or decision of the Bureau or a

court of law, or the voluntary surrender of a license by a licensee, shall not deprive the Bureau of jurisdiction to proceed with disciplinary proceedings against the licensee, or to render a decision disciplining the license. Thus, in this case, complainant may seek disciplinary action against respondent Moya's Smog Check Repair Technician License even though it expired in 2015.

Cause for Discipline Against Respondent So Cal Smog

8. When a licensee operates a licensed business through employees and agents, the licensee is responsible to the licensing authority for the employees' and agents' conduct in the exercise of the license. (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144; *Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 193.) By virtue of ownership of a license, the owner has a responsibility to see to it that the license is not used in violation of the law. (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360.)

9. Thus, a licensee in an administrative matter is responsible for the misconduct and regulatory violations of its employees. (*California Assn. of Health Facilities v. Dept. of Health Services* (1997) 16 Cal.4th 284, 295.) In this case, respondent So Cal Smog can be disciplined for the actions of respondent Moya, as well as Messrs. Bhatti and Urzua.

FIRST CAUSE FOR DISCIPLINE- UNTRUE OR MISLEADING STATEMENTS

10. Pursuant to section 9884.7, subdivision (a)(1), an Automotive Repair Dealer Registration is subject to discipline for "[m]aking 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."

11. California Code of Regulations, title 16, section (regulation) 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

12. In this case, cause exists to discipline respondent So Cal Smog's Automotive Repair Dealer Registration under section 9884.7, subdivision (a)(1), and regulation 3373. Respondent So Cal Smog's three employees, i.e., respondent Moya and Messrs. Bhatti and Urzua, made untrue or misleading statements by certifying that 11 vehicles were in compliance with applicable laws and regulations, when they knew, or reasonably should have known, the issued certificates of compliance were false. Respondent So Cal Smog is vicariously responsible for the actions of Messrs. Bhatti and Urzua, regardless of whether respondent Moya knew of his employees' actions, and respondent So Cal Smog is directly responsible for the actions of its owner, respondent Moya, who clean plugged one of the 11 vehicles in question. (Factual Findings 1-80: Legal Conclusions 8-9.)

SECOND CAUSE FOR DISCIPLINE- FRAUD

13. Section 9884.7, subdivision (a)(4), subjects an Automotive Repair Dealer Registration to discipline for "[a]ny other conduct that constitutes fraud."

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14. Neither the Automotive Repair Act nor the regulations promulgated under it include a definition of "fraud." In general, fraud will be found when an individual "intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him." (*Wayne v. Bur. of Private Investigators and Adjusters, Dept. of Prof. and Vocational Standards* (1962) 201 Cal.App.2d 427, 438; see also Civ. Code, § 1572.)

15. In this case, cause exists to discipline respondent So Cal Smog's Automotive Repair Dealer Registration pursuant to section 9884.7, subdivision (a)(4), because it was established by a preponderance of the evidence that 11 vehicles were issued certificates of compliance through the illegal and fraudulent method of clean plugging. Thus, respondent So Cal Smog intentionally transmitted false data to the Bureau or DMV in order to pass 11 vehicles through smog check inspections that would not have passed otherwise. Respondent So Cal Smog is vicariously responsible for the actions of Messrs. Bhatti and Urzua, and directly responsible for the actions of its owner respondent Moya. (Factual Findings 1-80; Legal Conclusions 8-9.)

THIRD CAUSE FOR DISCIPLINE- MATERIAL VIOLATION OF THE AUTOMOTIVE REPAIR ACT

16. Pursuant to section 9884.7, subdivision (a)(6), an Automotive Repair Dealer Registration is subject to discipline for "[f]ailure in any material respect to comply with the provisions of this chapter [Chapter 20.3 of the Automotive Repair Act] or regulations adopted pursuant to it."

17. In this case, cause exists to discipline respondent So Cal Smog's Automotive Repair Dealer Registration pursuant to section 9884.7, subdivision (a)(6), in

that it was established by a preponderance of the evidence that respondent Moya and two other employees of respondent So Cal Smog issued certificates of compliance for 11 vehicles based on false data transmitted to the Bureau, through the illegal method of clean plugging, in contravention of the Automotive Repair Act and the regulations adopted pursuant to it. Moreover, respondent So Cal Smog cannot show this misconduct was the result of a bona fide error, based on the intentional and fraudulent behavior necessarily subsumed within clean plugging. Respondent So Cal Smog is vicariously responsible for the actions of Messrs. Bhatti and Urzua, and directly responsible for the actions of its owner respondent Moya. (Factual Findings 1-80; Legal Conclusions 8-9.)

FOURTH CAUSE FOR DISCIPLINE- VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM

18. Pursuant to Health and Safety Code section 44072.2, subdivision (a), a Smog Check Station Licensee is subject to discipline if it “[v]iolates any section of this chapter [Chapter 5 of the Motor Vehicle Inspection Program] . . . , which related to the licensed activities.”

19. Health and Safety Code section 44012 requires that smog check inspections be performed in accordance with procedures prescribed by the Bureau.

20. Health and Safety Code section 44015, subdivision (b), provides that if a vehicle meets the requirements of Health and Safety Code section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

21. In this case, cause exists to discipline respondent So Cal Smog’s Smog Check Station License under Health and Safety Code section 44072.2, subdivision (a),

in that it was established by a preponderance of the evidence that it failed to ensure emission control checks were performed on 11 vehicles in accordance with Bureau procedures, as required by Health and Safety Code section 44012. In addition, respondent Moya and two other employees issued certificates of compliance for 11 vehicles without ensuring the vehicles were properly checked and inspected, as required by Health and Safety Code section 44015, subdivision (b). Respondent So Cal Smog is vicariously responsible for the actions of Messrs. Bhatti and Urzua, and directly responsible for the actions of its owner respondent Moya. (Factual Findings 1-80; Legal Conclusions 8-9.)

FIFTH CAUSE FOR DISCIPLINE- DISHONESTY, FRAUD OR DECEIT

22. Pursuant to Health and Safety Code section 44072.2, subdivision (d), a Smog Check Station Licensee is subject to disciplinary action when it "commits any act involving dishonesty, fraud, or deceit whereby another is injured."

23. In this case, cause exists to discipline respondent So Cal Smog's Smog Check Station License under Health and Safety Code section 44072.2, subdivision (d), in that it was established by a preponderance of the evidence that its employees committed acts involving dishonesty, fraud, or deceit whereby another was injured, by issuing false certificates of compliance for 11 vehicles using the method of clean plugging. Respondent So Cal Smog is vicariously responsible for the actions of Messrs. Bhatti and Urzua, and directly responsible for the actions of its owner respondent Moya. (Factual Findings 1-80; Legal Conclusions 8-9.)

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**SIXTH CAUSE FOR DISCIPLINE- FAILURE TO COMPLY WITH REGULATIONS
PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM**

24. Pursuant to Health and Safety Code section 44072.2, subdivision (c), a Smog Check Station Licensee is subject to disciplinary action for failing to comply with regulations adopted under Chapter 5 of the Motor Vehicle Inspection Program.

25. Regulation 3340.24, subdivision (c), provides, in pertinent part, that the Bureau may discipline a license if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

26. Regulation 3340.30, subdivision (a), provides, in pertinent part, that a licensed smog check inspector and/or repair technician shall inspect, test, and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035, as well as regulation 3340.42 (see below).

27. Regulation 3340.41, subdivision (c), provides, in pertinent part, that 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.

28. Regulation 3340.42 provides, in pertinent part, that smog check inspection methods must be done in accordance with the Smog Check Inspection Manual, which is incorporated by reference in regulation 3340.45.

29. In this case, cause exists to discipline respondent So Cal Smog's Smog Check Station License under Health and Safety Code section 44072.2, subdivision (c), in that it was established by a preponderance of the evidence that it failed to comply

with the regulations adopted under the Motor Vehicle Inspection Program. Specifically, respondent Moya and two other employees issued certificates of compliance to 11 vehicles, even though those vehicles had not been inspected in accordance with the Smog Check Inspection Manual referenced in regulation 3340.42. By clean plugging 11 vehicles during inspections, respondent So Cal Smog's employees violated regulations 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42. Respondent So Cal Smog is vicariously responsible for the actions of Messrs. Bhatti and Urzua, and directly responsible for the actions of its owner respondent Moya. (Factual Findings 1-80; Legal Conclusions 8-9.)

Cause for Discipline Against Respondent Moya

SEVENTH CAUSE FOR DISCIPLINE- VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM

30. Pursuant to Health and Safety Code section 44072.2, subdivision (a), a Smog Check Inspector or Smog Check Repair Technician Licensee is subject to disciplinary action for violating any section of Chapter 5 of the Motor Vehicle Inspection Program related to licensed activities.

31. Health and Safety Code section 44032 provides:

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.

32. In this case, cause exists to discipline respondent Moya's Smog Check Inspector and Smog Check Repair Technician Licenses under Health and Safety Code section 44072.2, subdivision (a). It was established by a preponderance of the evidence that respondent Moya failed to perform tests of emission control devices and systems of one vehicle he inspected in accordance with Health and Safety Code section 44032; for that one inspection he also caused an electronic smog certificate of compliance to be issued without ensuring the vehicle was properly tested and inspected to determine if it was in compliance with Health and Safety Code section 44015, subdivision (b). (Factual Findings 1-38, 57-58, 61-80; Legal Conclusion 20.)

EIGHTH CAUSE FOR DISCIPLINE- FAILURE TO COMPLY WITH REGULATIONS PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM

33. Pursuant to Health and Safety Code section 44072.2, subdivision (c), a Smog Check Inspector or Smog Check Repair Technician Licensee is subject to disciplinary action for failing to comply with the provisions of regulations adopted under Chapter 5 of the Motor Vehicle Inspection Program.

34. In this case, cause exists to discipline respondent Moya's Smog Check Inspector and Smog Check Repair Licenses under Health and Safety Code section 44072.2, subdivision (c). It was established by a preponderance of the evidence that respondent Moya issued a certificate of compliance for one vehicle, even though that vehicle had not been inspected in accordance with the Smog Check Inspection Manual referenced in regulation 3340.42. By clean plugging one vehicle during its inspection,

respondent Moya violated regulations 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42.. (Factual Findings 1-38, 57-58, 61-80; Legal Conclusions 25-28.)

NINTH CAUSE FOR DISCIPLINE- DISHONESTY, FRAUD OR DECEIT

35. Health and Safety Codey section 44072.10, subdivision (c), provides:

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.
- (2) Tampering with a vehicle emission control system or test analyzer system.
- (3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

36. In this case, cause exists to discipline respondent Moya's Smog Check Inspector and Smog Check Repair Technician Licenses under Health and Safety Code section 44072.2, subdivision (d) (see Legal Conclusion 22), in conjunction with section 44072.10, subdivision (c), in that it was established by a preponderance of the evidence that respondent Moya fraudulently certified at least one vehicle by using the illegal method of clean plugging. (Factual Findings 1-38, 57-58, 61-80.)

Disposition

DISCIPLINE

37. The statutes relating to licensing discipline are intended to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.)

38. The Bureau's *Guidelines for Disciplinary Orders and Terms of Probation* (rev. June 2021 [Guidelines]), promulgated pursuant to regulation 3395.4, identify factors to be considered in determining the appropriate level of discipline, as well as the recommended discipline for the various types of misconduct established in this case.

39. The Guidelines identify 15 aggravating and 12 mitigating factors to be considered in determining discipline. (Ex. 21, pp. A224-226.)

40. Three of the listed aggravating factors apply to respondents. Respondent Moya received two warnings by PR Magaña in 2022 after the station's DAD locked out. (Factor 1.) The 11 instances of clean plugging established in this case constitute a pattern and practice of illegal activity, at least with respect to respondent So Cal Smog. (Factor 9.) Respondent Moya probably engaged in one other instance of clean plugging, when he inspected the 2000 Durango in 2022. (Factor 15.)

41. Two mitigating factors apply. Respondents have no prior discipline by the Bureau. (Factor 6.) Respondent Moya's two probable instances of clean plugging are not necessarily a pattern of illegal practice. (Factor 7.)

42. The Guidelines set forth recommended discipline for specific statutory and regulatory violations. In this case, the Guidelines' recommended discipline for respondents' misconduct gravitates around three to five years' probation with various

optional terms. However, the Guidelines only recommend revocation for the fraudulent issuance of a certificate of compliance in violation of Health and Safety Code section 44072.10, subdivision (c). That recommendation tracks the language of that statute, mandating the revocation of any smog check or station licensee who engages in clean plugging.

43. According to the mandate of Health and Safety Code section 44072.10, subdivision (c), respondents' Smog Check, Smog Check Inspector, and Smog Check Repair Technician Licenses must be revoked due to the clean plugging activity established in this case. While respondent So Cal Smog's Automotive Repair Dealer Registration is not subject to the same mandate, there is no reason apparent to treat it differently, given at least 11 documented instances of clean plugging established in this case. (Factual Findings 1-80; Legal Conclusions 1-42.)

OTHER CONSIDERATIONS

44. Pursuant to section 9884.7, subdivision (c), the Director of the Department (Director) may suspend, revoke, or place on probation the Automotive Repair Dealer Registration for all places of business operated in this state by respondent Moya, upon a finding he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an Automotive Repair Dealer Registration. However, such action is not warranted in this case. It was not established that respondent Moya personally engaged in repeated and willful violations of the applicable laws and regulations. His probable involvement in two instances of clean plugging does not necessarily establish a pattern of repeated, willful violations.

45. Pursuant to Health and Safety Code section 44072.8, if the Smog Check Station License issued to respondent So Cal Smog is revoked or suspended following a

hearing, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the Director. In this case, because respondent So Cal Smog's Smog Check Station License is revoked, any additional license issued in the name of So Cal Smog (or Mr. Moya), under Chapter 5 of the Motor Vehicle Inspection Program, shall be revoked.

46. Pursuant to Health and Safety Code section 44072.8, if the Smog Check Inspector or Smog Check Repair Technician Licenses issued to respondent Moya are revoked or suspended following a hearing, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in his name may be likewise revoked or suspended by the Director. In this case, because respondent Moya's licenses are revoked, any additional license issued in his name under Chapter 5 of the Motor Vehicle Inspection Program shall be revoked.

COSTS

47. Section 125.3 provides that a licentiate found to have committed a violation of an applicable licensing act shall pay the reasonable costs of the investigation and enforcement of the case.

48. Here, respondents were found to have violated the Automotive Repair Act and the Motor Vehicle Inspection Program. As set forth in Factual Finding 81, the costs total \$10,245.00, and are reasonable given the scope and complexity of this case.

49. The Bureau must evaluate several factors to ensure that cost recovery does not deter individuals from exercising their right to a hearing. (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 (*Zuckerman*)). The Bureau must not assess full costs where it would unfairly penalize a respondent who has committed

some misconduct but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. Thus, the Bureau must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the Bureau must consider a respondent's ability to pay; and the Bureau may not assess disproportionately large investigation and enforcement costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct.

50. In this case, the *Zuckerman* factors do not warrant a reduction of the Bureau's costs incurred in investigating and prosecuting this case. Respondents engaged in the most serious misconduct applicable to their licensing rights, clean plugging. It cannot be concluded respondents will be unfairly penalized by having to pay costs after a failed attempt to avoid mandatory revocation of their licenses for such activity. Nor can it be concluded that respondents either had a subjective good faith belief in the merits of their defense or a colorable challenge to the Bureau's evidence. The Bureau's costs were reasonable, and are not disproportionately large when measured against the seriousness of respondents' misconduct. However, respondent Moya did establish he will be unable to pay the costs after his livelihood is substantially impacted by the revocation of his various licenses. (Factual Findings 81-82.) Thus, respondents shall not be required to pay these costs, unless and until either of them has their licensing rights reinstated.

ORDER

Automotive Repair Dealer Registration Number ARD 295794, issued to respondent Oscar Moya, dba So Cal Smog, is revoked.

Smog Check Station License Number TC 295794, issued to respondent Oscar Moya, dba So Cal Smog, is revoked.

Any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Oscar Moya is revoked.

Smog Check Inspector License Number EO 631368, issued to respondent Oscar Moya, is revoked.

Smog Check Repair Technician License Number EI 631368, issued to respondent Oscar Moya, is revoked.

Any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Oscar Moya is revoked.

Respondents Oscar Moya, dba So Cal Smog, and Oscar Moya, are ordered to pay the Director of the Department of Consumer Affairs costs of the investigation and prosecution of this case in the amount of \$10,245.00, if and when either of their licensing rights are reinstated.

DATE: 12/01/2025



Eric C. Sawyer (Dec 1, 2025 13:24:48 PST)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings