BEFORE THE DIRECTOR OF THE

DEPARTMENT OF CONSUMER AFFAIRS

BUREAU OF AUTOMOTIVE REPAIR

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THOMAS NGHIA TRUNG LE dba BN SMOG CHECK

1098 E. Williams St.

San Jose, CA 95116

Mailing Address:

1218 Prescott Ave.

Sunnyvale, CA 94089

Automotive Repair Dealer Registration No. ARD 297104

Smog Check Test Only Station License No. TC 197104

Smog Check Inspector License No. EO 642438

Respondent.

Case No. 79/24-6363

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DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on March 10, 2026.

IT IS SO ORDERED January 28, 2026.

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

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

In the Matter of the Accusation Against:

THOMAS NGHIA TRUNG LE, d.b.a. BN SMOG CHECK,

Automotive Repair Dealer Registration No. ARD 297104

Smog Check, Test Only, Station License No. TC 297104

Smog Check Inspector License No. EO 642438

Respondent.

Agency Case No. 79/24-6363

OAH No. 2025040916

PROPOSED DECISION

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on December 8 and 9, 2025, via videoconference.

Deputy Attorney General Galen O. Currens represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Attorney William D. Ferreira represented respondent Thomas Nghia Trung Le doing business as BN Smog Check, who was not present.

The matter was submitted on December 9, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 15, 2020, the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), issued Automotive Repair Dealer (ARD) Registration No. ARD 297104 to respondent Thomas Nghia Trung Le, doing business as BN Smog Check.

2. On June 4, 2024, the Bureau issued Smog Check, Test Only, Station License No. TC 297104 to respondent. The registration and license were both in full force and effect at all relevant times and were scheduled to expire on April 30, 2025, unless renewed.

3. On August 7, 2020, respondent's BN Smog Check Station was certified as a STAR Station.

4. On January 15, 2020, the Bureau issued Smog Check Inspector License No. EO 642438 to respondent. This license was in full force and effect at all relevant times and is scheduled to expire on March 31, 2026, unless renewed. There is no prior discipline against respondent's licenses or registration.

5. On September 26, 2024, complainant Patrick Dorais issued the accusation, solely in his official capacity as the Chief of the Bureau. Complainant seeks

to discipline respondent's ARD registration and licenses based on allegations that between March 28, 2024, and April 15, 2024, he issued 10 fraudulent smog certificates of compliance and violated other statutes and regulations. Respondent timely filed a notice of defense and this proceeding followed.

Smog Check Inspections and the Practice of Clean Plugging

6. California's Smog Check Program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles.

7. Beginning in March 2015, smog check inspections of most vehicles in California are performed pursuant to the Bureau's On-Board Diagnostics Inspection System (BAR-OIS) protocol. The system consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer.

8. As part of a BAR-OIS inspection, the on-board diagnostic (OBD) system of the vehicle being tested is connected to the OIS analyzer by means of a DAD. The inspection system retrieves OBD data from the vehicle's computer, which the system sends to the Bureau's vehicle information database (VID). The BAR-OIS software requires a continuous internet connection when performing the inspection.

9. The bar code scanner is used to input inspector information, the vehicle identification number (VIN), and Department of Motor Vehicles (DMV) renewal information for a vehicle being tested. Technicians must be licensed and registered by the Bureau to perform official smog check inspections. To perform a smog inspection, the technician must first enter unique information to log onto the OIS analyzer. The technician can use the bar code scanner that connects to the analyzer to enter their license number, which is on their badge, and then enter an access code or provide a biometric palmprint for identification purposes. The next step is for the technician to

identify the vehicle being tested. To enter the VIN of the vehicle being tested, the technician can physically scan the bar code on either the door or dashboard of the vehicle, scan the bar code on the customer's DMV renewal paperwork, or manually enter the VIN.

10. As part of the OIS smog inspection, the technician also performs visual and functional tests on the vehicle being inspected, as outlined in the Smog Check Manual. The visual inspection of the emission control components verifies that the required emission control devices are present and properly connected, and a functional test is performed of the malfunction indicator light (MIL, commonly known as the "check engine" light). The MIL must function properly for the vehicle to pass inspection.

11. The OIS software makes the determination whether or not the vehicle passes the inspection based on the results of the OBD, visual, and functional tests. If the vehicle passes inspection, the OIS will prompt the technician to indicate whether a certificate of compliance is requested. If the technician answers in the affirmative, a certificate of compliance is issued, which is transmitted to the VID and the DMV.

12. The system then generates a vehicle inspection report (VIR), which is a physical record of the visual and functional test results and shows the certificate of compliance number that was issued if the vehicle passed the smog check inspection, the inspector's information, and the station's information. To generate the VIR, the smog check inspector must enter their credentials. The smog check inspector must also sign the VIR to indicate that the inspection was performed within Bureau requirements. All data gathered during a smog check inspection is transmitted and retained in the VID.

13. Clean plugging is the illegal practice of using another vehicle's OBD system, or another device, during the OBD portion of a smog inspection to generate passing data readings for the purpose of fraudulently issuing smog certificates to vehicles that are not in compliance or not actually tested.

14. One method of detecting clean plugging is identifying whether certain data, such as the electronic vehicle identification number (eVIN), communication protocol, or parameter identification (PID) count electronically transmitted by the vehicle to the VID, matches the data expected for the year, make, and model of the vehicle being inspected. If a different vehicle is tested, it will not transmit the unique eVIN for the vehicle purportedly being tested. If the vehicle actually tested is a different year, make, or model than the vehicle purportedly tested, it may transmit a different communication protocol or PID count than expected.

15. The Bureau now has another method of detecting fraudulent smog inspections via the data points transmitted during the inspection specifically relating to engine functioning. Defeat devices attempt to simulate engine operation during a smog check inspection by transmitting OBD data to the VID which has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a defeat device during a smog check inspection is clean plugging and is strictly prohibited.

16. In this case, the Bureau alleged that respondent used the "clean plugging" method to fraudulently issue smog certificates to 10 vehicles.

Bureau's Investigation Revealing 10 Instances of Clean Plugging by Respondent Between March 28, 2024, and April 15, 2024

17. Michael Weaver testified credibly at hearing and wrote an investigative report, dated June 17, 2024. Weaver has worked for the Bureau for six and one-half years. Weaver is a Program Representative. His duties include reviewing and analyzing smog check data, performing smog check station inspections, conducting investigations, and writing reports. Weaver has conducted approximately 20 clean plugging investigations. Before joining the Bureau, Weaver attended automotive trade school, worked in automotive repair for multiple auto body shops, and subsequently operated his own smog shop with multiple employees for 15 years. Weaver performed smog inspections, brake light inspections, and general automotive repair. He was trained on how engines operate and function, performed work on more than 1,000 engines, and has held a smog inspector license, smog repair technician license, and certification as a master level mechanic.

18. Weaver explained that some OIS inspections include a dynamic portion (dynamic test) that tests the inspection integrity. The dynamic test is prompted randomly at the conclusion of the OBD portion of the test and exists to identify fraudulent inspections. The dynamic test does not affect whether a vehicle passes a smog check inspection. During the dynamic test, the analyzer retrieves information through the DAD from sensors in the vehicle related to the operation and function of the engine.

19. During the dynamic test, time-stamped data from the vehicle's sensors is transmitted to the VID, including:

- engine speed measured in RPM (revolutions per minute);

- throttle position measured in a percentage of opening, ranging from near zero percent at idle to near or at 100 percent at full throttle;
- manifold air pressure (MAP) measured in kilo pascals (kpa), with typical readings for a normally aspirated vehicle of 25 to 45 kpa at idle and 101 kpa at full throttle; and
- mass air flow (MAF) measured in grams per second (gps).

20. Weaver opined that, during normal engine operation at idle, the engine speed is relatively steady; throttle position is steady at or near zero percent; and the MAP and MAF readings are also steady. In order for the engine speed to increase, the throttle must be opened to increase airflow through the engine. An increase in throttle position increases engine RPM, which results in a corresponding increase in MAF as well as a change in MAP. In his report, Weaver wrote, "Stated another way, any movement in the throttle from the idle position will result in an increase in airflow through the engine with corresponding increases RPM and MAF along with changes in MAP."

21. Weaver explained in his report how the dynamic test is designed:

> During an OIS Smog Check inspection, along with other visual and functional inspections, there is an OBD II query portion of the inspection. The OBD II query is performed with the engine idling and, when requested by the OIS analyzer, [] an elevated or increased engine speed. The increase in engine speed is performed by the inspector by stepping on the throttle pedal or manually opening the

throttle resulting in a corresponding increase in engine RPMs by allowing an increase in airflow into the engine.

22. When Weaver reviews data for the sensors referenced in Factual Finding 19, he is looking for data that are consistent with how an engine operates based on his knowledge and experience. Weaver opined that, if the data transmitted show that the engine speed increases with no change in throttle position, MAP, or MAF, then the data could not have come from a functioning vehicle with an engine running. Weaver's opinions are based on his experience as a technician working on over 1,000 engines, his training at automotive trade school, his experience as an investigator for the Bureau, and his reviews of smog check data for other vehicles.

23. Weaver reports that defeat devices (also known as simulators) exist and can be plugged into a station's inspection system by means of a DAD. A defeat device is typically a laptop with a software program used to simulate data of a vehicle purportedly being tested and transmit this data to the Bureau during a smog inspection, to generate a false "pass" result and issue a fraudulent certificate of compliance. Weaver has seen at least one defeat device being used in a shop to fraudulently transmit data during a smog inspection. Weaver has also received training on "defeat devices" at the Bureau. Weaver must keep up to date on these devices because they change with time.

24. Weaver reports that to use a defeat device, a technician would typically have to enter the eVIN, make, model, and year of the vehicle purportedly tested. The defeat device would contain all the other expected data for the specified vehicle, such as the appropriate communication protocol and PID count, which had been previously input into it to simulate the vehicle. The defeat device would transmit the data expected by the Bureau during the functional portion of the BAR-OIS inspection, in

which case a fraudulent smog inspection would not necessarily be detectable via review of the eVIN, communication protocol, and PID count data transmitted. Weaver reported that the PID count, protocol and eVIN matched the expected values during the 10 instances of clean plugging in this case.

25. According to Weaver, there are multiple reasons that a consumer would pay for an illegal smog inspection. Consumers typically seek out a fraudulent inspection when they know that their car will fail a properly performed inspection; for example, if the check engine light is illuminated or if modifications were made to the vehicle that would cause it to fail. Although performance type vehicles are typically modified, consumers also make modifications to all types of vehicles for various reasons.

26. Technicians typically engage in clean plugging or using defeat devices to charge more money for these inspections, because they generally involve vehicles that cannot pass a proper smog inspection.

27. As part of his duties, Weaver reviewed information transmitted from respondent's smog check station BN Smog Check to the VID and discovered some anomalies. As a result, on April 15, 2024, Weaver reviewed the OIS data transmitted from respondent's station for the smog check inspections performed at BN Smog Check between March 28, 2024, and April 15, 2024. He also reviewed the Vehicle Inspection Report (VIR) and OIS Test Detail Report associated with each inspection. Weaver accessed the VID for this information.

28. Weaver identified more than 20 smog inspections with anomalous data suggesting fraudulent use of a defeat device. He conducted a comprehensive review of 10 of these inspections. The 10 inspections were of vehicles of a variety of makes,

models, and years. The vehicles included several Toyotas, a Chevrolet Silverado, a Honda Accord, and a Chevrolet Camaro X28, among others. The years of the vehicles ranged from 2000 to 2004. Weaver's review showed a pattern of vehicles being certified as passing the smog inspection with engine operating parameters not characteristic or expected for normal engine operation.

29. All 10 of the vehicles were tested and certified under respondent's smog inspector license. All the inspections were performed at respondent's smog check station, BN Smog Check. In each of these 10 inspections, a certificate of compliance was issued by respondent at BN Smog Check. In each of these 10 inspections, when respondent was asked to increase the engine speed during the inspection, the data transmitted showed a significant increase in the engine speed (the RPM almost or more than doubled), but no change in throttle position, MAP, and/or MAF (depending on the manufacturer, vehicles may have MAF or MAP, or both). Complainant submitted documents setting forth the relevant data transmitted to the VID during each of these purported smog inspections.

30. Weaver concluded that in each of these 10 inspections, the data received by the Bureau could not have come from the vehicles purportedly tested, or any functioning vehicle with an engine running. He opined that there is no way to double engine speed without changing the throttle position and without a change in the air pressure in the engine in a functional vehicle, and the inspector could not have pressed the gas pedal or opened the throttle under the hood during these inspections. Therefore, the OIS DAD was not connected to the vehicles purportedly being tested and certified, and the data came instead from a defeat device during the OBD II functional test, resulting in the issuance of a fraudulent smog certificate of compliance

for each of the 10 vehicles. None of the 10 vehicles that were issued a certificate of compliance were legitimately inspected by respondent.

31. During his investigations for the Bureau, Weaver has not seen data like the sensor data transmitted for these 10 vehicles that was explainable by anything other than the use of a defeat device. Weaver is not aware of any type of malfunction occurring in multiple types of vehicles that would explain the pattern of anomalies in RPM, MAP, MAF, and throttle position for these 10 vehicles purportedly being tested. Nor is he aware of any other way the vehicles could transmit data sets such as these absent an inspector intentionally using an electronic defeat device to transmit the data in a fraudulent way.

32. Weaver opined that, if there were a problem with one of the vehicle's sensors that reports the dynamic test data, the vehicle would report a diagnostic trouble code and would illuminate the MIL. The vehicle also would drive badly, if at all. Weaver verified that the data transmitted showed no diagnostic test codes reported or stored, and did not show that the MIL was illuminated in any of the vehicles.

33. In about half of the clean plugging investigations Weaver has conducted, he visited the facility he was investigating. Weaver did not visit the facility in this case because he is confident in his conclusion that a defeat device was used based on the data he reviewed for the 10 vehicles during the inspections.

34. Weaver did not review any prior or subsequent smog inspection results for the 10 vehicles, including whether they are capable of transmitting the correct dynamic data, because he concluded that the information he reviewed for the inspections in the VID referenced in Factual Finding 29 did not come from those vehicles. Based on his review of the data, and his knowledge and experience, he

opined that there is no way for the data sets produced for those vehicles during the inspections to occur in a vehicle with a properly functioning engine. Therefore, the only explanation is that a defeat device was used to transmit the data relating to engine functioning during the inspections.

35. Weaver agreed that vehicle programmers or other devices available on the black market can plug into a vehicle's computer system to make changes to the software. He opined that such reprogramming did not occur in this case, because in his experience those programmers recalibrate or defeat different sensors, not main input sensors such as the ones in this matter that control the fuel mixture enabling the RPM to increase and the engine to run. Weaver is not aware of a programmer device that changes the sensor readings involved in this case. Most programmers and tuners affect other emissions devices that are not as critical to keeping the engine running.

36. Weaver reported that the defeat device used for these inspections was able to simulate RPM during the fraudulent OIS smog inspections, but did not realistically simulate the other three sensors relating to engine operations.

37. Weaver does not know the particular make or model of or how the defeat device and/or software that was used was programmed, because such devices are typically sold on the black market. Weaver is not an engineer or programmer.

38. Although Weaver is confident that the information for the 10 vehicles was transmitted by respondent from BN Smog Check, he does not know whether the defeat device was in the testing area of the station. He reported that it is possible that the defeat device was in another location.

39. There is no indication in the data Weaver reviewed that the DAD lost connection with either the vehicle or the OIS analyzer during the transmission of data from BN Smog Check to the VID.

Respondent's Contentions

40. Counsel on behalf of respondent contends that complainant has not completed sufficient investigation to meet his burden of proof in this matter. He points out that the Bureau did not conduct surveillance to see whether respondent had each of the 10 vehicles on the premises of BN Smog Check connected to the smog equipment at the station during the tests; the Bureau did not review prior and subsequent inspection information for the 10 vehicles to determine if they previously passed or failed smog inspections, previously transmitted different data, or could each generate the expected dynamic data; and the Bureau did not visit BN Smog Check and locate the defeat device. That additional evidence was not collected does not reduce the credibility of the evidence that the Bureau gathered and presented, which consisted of the expert opinion of Weaver that the only way that the anomalous sensor data for the 10 vehicles could have been generated during the inspections is with a defeat device. Furthermore, Weaver persuasively explained why additional evidence was not needed in this case.

41. Counsel contends that the anomalous data points reported during the inspections could have been caused by consumers who used programmers to modify software data in their vehicles, including engine functioning. Weaver did not believe this circumstance to be possible, and it is not supported by the evidence. In addition, the assertion that customers used or installed some type of programmer or software unbeknownst to respondent and thus were responsible for the pattern of data sets observed in all 10 vehicles over such a short time frame is not plausible.

42. Counsel contends that equipment or software malfunctions may have caused the anomalous data reported during the inspections for the 10 vehicles. The evidence presented does not establish that the data reported for the 10 vehicles was caused by a computer software issue, or an equipment malfunction issue, or modified software customers had installed, or other modifications made by customers.

43. Any other arguments put forth by respondents that are not specifically addressed have been considered and are rejected because they lacked appropriate evidentiary legal support.

Ultimate Findings

44. Weaver is a qualified and experienced Bureau investigator with academic training in how an engine functions and with extensive experience working as a smog check technician, mechanic, and smog shop operator. His opinion that respondent performed 10 intentionally fraudulent inspections was persuasive and unrebutted. The evidence showed by a preponderance that the data transmitted to the Bureau during these 10 smog inspections was not from the vehicles purportedly tested, and instead came from a defeat device. Accordingly, it is found that respondent committed 10 acts of clean plugging, using a defeat device. Respondent made untrue and misleading statements. The certificates and inspection reports respondent created and issued falsely indicated that the vehicles were tested in accordance with all Bureau requirements and the vehicles were qualified to receive certificates of compliance. There was no bona fide error. These were acts of intentional fraud.

Costs

45. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of $11,628.13, comprising

$1,188.88 in investigative costs and $10,439.25 for attorney and paralegal services provided by the Department of Justice and billed to the Bureau through December 8, 2025. That request is supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. Those costs are found to be reasonable.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof in this proceeding, and the standard of proof is a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.) If respondent contends mitigation or rehabilitation, it is his burden to prove those contentions by a preponderance of the evidence. (*Whetstone v. Board of Dental Examiners of Cal.* (1927) 87 Cal. App. 156, 164; Evid. Code, § 115.)

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE (UNTRUE OR MISLEADING STATEMENTS - REGISTRATION)

2. The Director of the Department (Director) is authorized to discipline the registration of an automotive repair dealer that makes an untrue or misleading statement "which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading," where the automotive repair dealer cannot show there was a bona fide error. (Bus. & Prof. Code, § 9884.7, subd. (a)(1) [All further statutory references are to the Business and Professions Code unless otherwise

stated.].) By untruthfully reporting to the Bureau that the 10 vehicles had been properly inspected and by certifying that these vehicles were in compliance with applicable laws and regulations, respondent made untrue and misleading statements, which he knew or with the exercise of reasonable care should have known were untrue, and those untrue statements were not the result of bona fide error. (Factual Finding 44.) Cause exists to discipline respondent's ARD registration under section 9884.7, subdivision (a)(1).

SECOND CAUSE FOR DISCIPLINE (FRAUD - REGISTRATION)

3. The Director may discipline the registration of an automotive repair dealer that commits an act that constitutes fraud. (§ 9884.7, subd. (a)(4).) The evidence established that respondent's issuance of 10 false certificates of compliance was fraudulent. (Factual Finding 44.) Cause exists to discipline his ARD registration under section 9884.7, subdivision (a)(4).

THIRD CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH AUTOMOTIVE REPAIR ACT - REGISTRATION)

4. The Director may discipline the registration of an automotive repair dealer that fails to comply with the Automotive Repair Act (Act) (§ 9880 et seq.) or the regulations adopted to implement it. (§ 9884.7, subd. (a)(6)). Respondent failed to comply with the Act when he made false or misleading statements on a record by creating and issuing false or misleading certificates of compliance and vehicle inspection reports for the 10 vehicles that were clean plugged (Cal. Code Regs., tit. 16, § 3373; Factual Finding 44.) The certificates and inspection reports falsely indicated that the vehicles were tested in accordance with all Bureau requirements and the vehicles were qualified to receive certificates of compliance. (Factual Finding 44.) Cause

exists to discipline respondent's ARD registration under section 9884.7, subdivision (a)(6).

FOURTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD, OR DECEIT)

5. Cause to discipline respondent's smog check station license and smog check inspector license exists under Health and Safety Code sections 44072.10 and/or 44072.2, subdivision (d), for fraud, whereby another was injured by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems of the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program, based on Factual Finding 44.

FIFTH CAUSE FOR DISCIPLINE (VIOLATION OF STATUTES AND REGULATIONS)

6. The Director may discipline the smog check station license and smog check inspector license of a licensee who violates statutes and regulations. (Health & Saf. Code, §§ 44072.10, 44072.2, subds. (a), (c).) Respondent failed to ensure that smog inspections were performed on vehicles in accordance with Department procedures (Health & Saf. Code, § 44012); willfully made false statements in issuing the smog certificates of compliance and on the vehicle inspections reports (Health & Saf. Code, § 44059); fraudulently issued smog certificates of compliance to certain vehicles without performing bona fide inspections of the emission control devices and systems of those vehicles (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); failed to perform smog tests in accordance with Health and Safety Code section 44012 and California Code of Regulations title 16, section 3340.42 (Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a)); entered false information and data about vehicles purportedly being tested into the emission inspection system (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)); did not

perform required smog tests and inspections of certain vehicles that he certified that he had smog checked in accordance with the Bureau's specifications (Cal. Code Regs., tit. 16, § 3340.42); and made false or misleading statements on a record (Cal. Code Regs., tit. 16, § 3340.45). (Factual Finding 44.) Respondent used an electronic device and/or software capable of simulating the OBD data stream from a vehicle; however, a preponderance of the evidence does not establish that this device was in the approved testing area of the station as alleged. (Factual Finding 38). Cause exists to discipline respondent's smog check inspector license under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c) as stated above.

Other Matters

7. Section 9884.7, subdivision (c), provides that the Bureau may suspend, revoke, or place on probation the registration for all places of business operated in this state by respondent, upon a finding that he has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. Such a course of repeated and willful violations has been established, based on Factual Finding 44, and Legal Conclusions 2 through 6.

8. Health and Safety Code section 44072.8 provides that if the Bureau revokes a license, any additional license issued under chapter 5 of part 5 of division 26 of the Health and Safety Code in the name of that licensee may also be revoked.

Discussion

9. In exercising its licensing and disciplinary functions, the Bureau's highest priority is the protection of the public. (§ 9880.3.) The purpose of license discipline is protection of the public through the prevention of future harm, and the improvement and rehabilitation of the licensee. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757,

772.) The Bureau's guidelines for disciplinary penalties (Cal. Code Regs., tit. 16, § 3395.4) have been considered in reaching the determination of the appropriate discipline. For the violations involved here, the guidelines recommend a minimum of license revocation, stayed during a five-year period of probation, and a maximum of outright revocation. Evidence that an unlawful act was part of a pattern or practice is a factor in aggravation as is evidence of conduct that constitutes fraud. Mitigating factors to be considered include the absence of prior disciplinary action, evidence of retraining and initiation of steps to minimize recurrence of the violations, and other factors that do not apply in this case.

10. Respondent's 10 instances of clean plugging constitute a pattern or practice of intentional fraud in the performance of his duties as a licensee. Clean plugging is one of the most serious offenses a Bureau licensee can commit. Other than the fact that he has not previously been disciplined, respondent did not present any evidence of mitigation or rehabilitation. Therefore, public protection requires the outright revocation of respondent's ARD registration, smog check, test only, station license, and smog check inspector license.

Costs

11. Pursuant to section 125.3, a complainant may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. Cause exists to order respondents to pay the Board's costs in the amount of $11,628.13. (Factual Finding 45, Legal Conclusions 2 through 6.)

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether costs

should be assessed in the particular circumstances of each case. The Bureau must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain a dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when the Bureau has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at pp. 44–45.) No cause for reduction of the cost award was established.

ORDER

1. Automotive Repair Dealer Registration No. ARD 297104, issued to Thomas Nghia Trung Le doing business as BN Smog Check, is revoked.

2. Any other automotive repair dealer registrations issued to respondent Thomas Nghia Trung Le are revoked.

3. Smog Check, Test Only, Station License No. TC 297104, issued to respondent Thomas Nghia Trung Le doing business as BN Smog Check, is revoked.

4. Smog Check Inspector License No. EO 642438, issued to respondent Thomas Nghia Trung Le, is revoked.

5. Any other licenses issued to respondent Thomas Nghia Trung Le under chapter 5 of part 5 of division 26 of the Health and Safety Code are revoked.

6. Respondent Thomas Nghia Trung Le is ordered to pay the Bureau of Automotive Repair its costs of investigation and enforcement in the amount of $11,628.13.

DATE: 01/02/2026

Michelle Dylan (Jan 2, 2026 11:05:30 PST)

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearings