

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

In the Matter of the Accusation Against:

ARTURO ZAMORANO dba GISELLE SMOG CHECK

4300 E. 3rd St. East

Los Angeles, CA 90022

Automotive Repair Dealer Registration No. ARD 298798

Smog Check Test Only Station License No. TC 298798

and

ARTURO ZAMORANO

6518 Walker Ave., #4

Bell, CA 90201

Smog Check Inspector License No. EO 643569

Respondents.

Case No. 79/23-8706

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OAH No. 2024010095

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 June 10, 2025.

IT IS SO ORDERED May 1, 2025.

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

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Check, Test Only, Station License No. TC 298798,**

and

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Smog Check Inspector No. EO 643569

Respondent.

Case No. 79/23-8706

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PROPOSED DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 22 and 23, 2024, January 29, and February 24, 2025.

William D. Gardner, Deputy Attorney General, represented complainant Patrick Dorias (Complainant), Chief, Bureau of Automotive Repair (BAR), Department of Consumer Affairs (Department).

Sarkis Paronyan, Attorney, Paronyan Law Firm, APC, represented Arturo Zamorano, doing business as (dba) Giselle Smog Check, and Arturo Zamorano (Zamorano), (collectively, Respondent), who was present throughout the hearing. Spanish interpreters provided interpretation throughout the hearing days for Respondent.

Testimonial and documentary evidence was received. The record was closed and the matter was submitted for decision on February 24, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 8, 2021, the Bureau issued Automotive Repair Dealer Registration No. ARD 298798 to Zamorano, Owner, dba Giselle Smog Check. On March 22, 2023, the Bureau issued Smog Check, Test Only, Station License No. TC 298798 to Zamorano, Owner, dba Giselle Smog Check. The registration and station license were in full force and effect at all times relevant to the Accusation's allegations. The registration and license expired on January 31, 2025. It is unclear from the evidence whether the registration and license were renewed.

2. On March 10, 2022, the Bureau issued Smog Check Inspector License No. EO 643569 to Zamorano. The license was in full force and effect at all times relevant to the Accusation's allegations. The license is scheduled to expire on April 30, 2026.

3. Giselle Smog Check is certified as a STAR Station. The Bureau's STAR program establishes performance standards that smog check stations must meet or exceed to become STAR-certified. (See Cal. Code Regs., tit. 16, § 3340.1.) The Bureau certified Giselle Smog Check as a STAR station on October 28, 2021. The certification remains active until the business' automotive repair dealer registration and/or smog check station license is revoked, canceled, or becomes delinquent, or the certification is invalidated.

4. Giselle Smog Check is a smog check station located at 4300 E. 3rd Street East, Los Angeles, California 90022. Zamorano owns the station and is a smog check inspector for the station.

Smog Check Inspection Program

5. California's smog check inspection program is designed to reduce air pollution by identifying and requiring the repair of polluting vehicles. The smog check program requires most vehicles in the state to undergo a smog check inspection every two years or when title is transferred.

6. California's smog check program was updated beginning on March 9, 2015, to require the use of an On-Board Diagnostic Inspection System (OIS). OIS is the smog check equipment required when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the California OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the California OIS software and is retrieved.

7. The DAD connects between the OIS computer and the vehicle's Diagnostic Link Connector (DLC) located in the vehicle's passenger compartment, which allows for the retrieval of information from the vehicle's on-board computer system. The California OIS software requires a continuous internet connection when performing a smog check inspection and the OIS software communicates with BAR's central database through the internet connection. The bar code scanner is used to input technician information, the vehicle's identification number (VIN), and DMV renewal information. The printer provides a Vehicle Inspection Report (VIR) containing the inspection results for motorists and a smog check certificate of compliance number for passing vehicles.

8. The data retrieved and recorded during an OIS smog check includes: the eVIN, which is the digitally stored VIN programmed by the manufacturer into the vehicle's Powertrain Control Module (PCM); the communication protocol, which is the manufacturer/vehicle specific language the PCM uses to relay or communicate information. The communication protocol is programmed into the vehicle's on-board computer during manufacture and does not change.

9. The other data retrieved and recorded during an OIS smog check includes the number of Parameter Identifications (PIDs), which refers to the number of specific data values (i.e., codes) retrieved and recorded from a vehicle's on-board computer during an OIS smog check inspection. That specific data includes the vehicle's engine speed, throttle position, manifold absolute pressure, and the engine's mass air flow readings throughout an inspection. Specifically, the following types of data are recorded during an OIS smog check inspection: engine speed revolutions per minute (RPS); throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft, measured in a percentage of opening from zero

percent at idle and near or up to 100 percent at full throttle; manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa), (Typical readings for a normally aspired vehicle are as follows: zero kpa being an absolute vacuum, 25 kpa to 45 kpa at idle, 101 kpa at full throttle, same atmospheric pressure at sea level; and, mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract, measured in grams per second (gps).

10. BAR is aware of methods some smog check stations and inspectors use to fraudulently issue smog certificates to vehicles that will not pass a smog check test, or in some instances, are not even present during the time that the test is performed. One such method, which is known as "clean plugging," involves using another vehicle's properly functioning OBD II system or another source such as a defeat device/simulator, to generate passing data readings or diagnostic information for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance and/or are not present for testing.

11. Defeat devices/simulators attempt to simulate engine operation during a smog check inspection by transmitting OBD II data to the VID that has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a default device/simulator during a smog check inspection constitutes "clean plugging" which is strictly prohibited by relevant rules and regulations. The BAR is able to utilize the data retrieved and recorded during an OIS smog check to identify inspections in which a defeat device/simulator was used, as described below.

12. In an OIS smog check inspection, the vehicle is monitored and PID data readings are obtained while the engine is idling and also when the smog check

inspector is prompted to increase the engine speed to a certain level and then maintain that speed for a period of time. For the engine speed to increase, the throttle must be opened to increase airflow through the engine. When the throttle position is increased, the engine speed increases as measured in RPM, resulting in a corresponding increase in mass air flow rate (MAF) as well as a change in the manifold absolute pressure (MAP).

13. "Clean plugging" is evident in cases where the data recorded during an OIS smog check shows that the engine speed as measured in RPM increases during the test, but the throttle position remains unchanged, the MAF is unchanged, and the MAP is unchanged. Since engine speed as measured in RPM cannot increase without corresponding increases in the throttle position and MAF and changes in the MAP, test data in such cases shows that a defeat device/simulator was used to simulate engine speed (RPM) readings for a vehicle that was not actually tested.

14. Marc Ortega, a BAR representative, initiated an investigation in which he reviewed OIS Test Data for inspections performed at Respondent's facility from December 1, 2022, through June 6, 2023. The investigation revealed that the data related to certain vehicles certified by Respondent contained a pattern of unmistakable discrepancies between the information transmitted during the inspections and the recognized and scientifically established characteristics of internal combustion engine operation. The investigation also revealed instances when the eVIN transmitted during the inspection did not match the true VIN of the vehicle that was purportedly being tested.

15. Specifically, Ortega identified 10 instances in which the throttle position, MAF, and MAP all remained unchanged when vehicle engine speeds were taken from idle to a steadily elevated RPM. The BAR concluded such conditions would not have

occurred if the DAD had been connected to the vehicles that were purportedly being tested instead of a defeat device that simulated engine RPM. Ortega also identified one instance in which the eVIN transmitted during the inspection did not match the VIN of the vehicle and two instances in which the eVIN transmitted during the inspection was "I AM A SIMULATOR."

16. On January 4, 2024, Complainant filed an Accusation in his official capacity alleging that these document discrepancies confirm that, in performing the inspections at issue, Respondent engaged in the illegal activity of "clean plugging" in order to issue fraudulent certificates of compliance for the vehicles. The Accusation lists the 12 specific smog tests and vehicles at issue (Exhibit 1, pp. A11-A13), and that list is incorporated by reference. Respondent filed a timely notice of defense.

Hearing

COMPLAINANT

17. Complainant presented testimony and an investigative report from Ortega, who opined that the data from the 10 smog tests showed a pattern of readings for throttle position, MAP, and MAF, when RPM was taken from idle to a steady rate consistent with "clean plugging." In addition, one of those 10 cars also transmitted an eVIN during the smog test that did not match the vehicle VIN, indicating a fraudulent smog test was performed. In addition, Ortega opined that the two of the 12 cars' smog tests data were consistent with "clean plugging" because the eVIN transmitted during the inspection was "I AM A SIMULATOR."

18. Complainant also presented testimony, an investigative report, and photos from a September 17, 2021 station inspection by Ortega and other BAR representatives at Giselle Smog Check. Zamorano was not present at Giselle Smog

Check at the time. During the inspection, a white Honda Accord vehicle registered to Zamorano was present at the station. In addition, in a small office located in Giselle Smog Check with complete BAR OIS platform CV013021, registered to Brothers Smog Test Only, and equipment used to perform fraudulent smog check inspections (i.e., a simulator) was recovered by BAR representatives. Unsigned VIRs with vehicle information were also found on a desk inside a small office inside Giselle Smog Check as well as a notebook with handwritten instructions for using the simulator. Joanna Karely Avalos Zamorano (Avalos), a BAR-revoked smog check inspector EO 639548, was present at Giselle Smog Check during the inspection.

19. During an October 7, 2021 meeting between Zamorano, his legal representative, and Ortega to discuss the September 17, 2021 inspection, Zamorano admitted Avalos was his niece and stated she would not be present in the future at Giselle Smog Check for any reason that required she hold a license, but he provided no response for why Avalos, a revoked smog technician, was present at Giselle Smog Check on September 17, 2021. Zamorano stated during the October 7, 2021 meeting that, going forward, he will monitor the day-to-day activities of Giselle Smog Check by being at the location at least once a day. Zamorano stated he and his technician are the only people who have keys to Giselle Smog Check. Zamorano also stated he will evaluate his business model and make changes for immediate compliance and will make every effort as owner to ensure vehicles are inspected completely, accurately, and consistent with BAR laws and regulations. Ortega provided Zamorano with instructions on how to place reports on BAR97 and OIS platforms.

20. On June 5, 2023, Ortega visited Giselle Smog Check and met with Zamorano, to perform an inspection of the station's smog check test only station equipment materials and signage. Ortega informed Zamorano that compliance with

the Automotive Repair Act is mandatory. Zamorano provided Ortega with station invoices with attached VIRs for December 2022, January 2023, April 2023, May 2023, and June 2023. Ortega advised Zamorano that the station records will be reviewed and returned at a later date. Zamorano admitted to Ortega that he personally performed all smog check inspections under his license, did not share his license or access code, and signed all VIRs. Ortega advised Zamorano that inappropriate activity in performing smog check inspections will result in lockout and/or disciplinary action.

RESPONDENT

21. Respondent did not call Zamorano as a witness in support of Respondent's defense at hearing.

22. Respondent's counsel's examination and cross-examination of witnesses established the BAR performed no surveillance of Giselle Smog Check and never saw anyone at the station "clean plugging" a vehicle using a simulator or otherwise. Further, the BAR representatives did not see Zamorano at Giselle Smog Check on September 17, 2021, and did not see a simulator in use during that visit. The simulator discovered on September 17, 2021, was not involved in the 12 smog tests at issue. The BAR also did not contact any of the vehicle owners regarding the 12 tests.

23. Respondent presented character reference declarations and testimony of Zamorano's friends in support of Respondent's continued licensure. (Testimonies of Jose Ortega and Aleyda Felix de Ortega; Exhibits A-C, and D.) The testimony and declarations were considered in writing this Decision but are afforded little evidentiary weight. None of the aforementioned declarants and witnesses had any personal knowledge of the 12 smog tests at issue and none of them used Respondent's services

to smog check any of their vehicles. Their knowledge of Zamorano is limited to personal friendships.

24. The declaration of Jacqueline Boix was submitted by Respondent in support of Respondent's continued licensure. (Exhibit E.) Boix, the president of JB Insurance Services, Inc. wrote that she has been close friends with Zamorano for 20 years and is a customer of Giselle Smog Check. Boix praised Respondent's "great customer service and expertise," and wrote that Respondent has "dealt with every smog check with thoroughness, care and integrity." (*Ibid.*) Boix did not indicate any personal knowledge of the 12 smog tests at issue.

25. Juan Carlos Castillo Villasenor, a mechanic and BAR-licensed air conditioning (AC) repair licensee, testified at hearing. Villasenor testified he has known Zamorano for the past 15 to 17 years. Villasenor initially met Zamorano when the latter was a vendor who sold oil and other liquids to Villasenor. After Zamorano became a smog technician, Villasenor testified he referred clients to Zamorano for smog check inspections; the referred customers never complained about Respondent's smog check services. Villasenor did not indicate any personal knowledge of the 12 smog tests at issue. Villasenor's testimony is afforded little evidentiary weight because it is unreliable. Villasenor flip-flopped during his testimony, initially testifying that he heard Zamorano was dishonest from other sources and then changed his testimony, stating he had not heard Zamorano was dishonest.

Analysis of Evidence

26. Complainant's evidence that the 12 vehicles at issue were clean-plugged was persuasive and unrebutted. The exhibits and testimony from Ortega establish there is no other plausible explanation for the smog test data transmitted under

Zamorano's license from Giselle Smog Check to the BAR's VID. Further, Ortega observed evidence on September 17, 2021 at Giselle Smog Check, including, but not limited to, a simulator. While that specific simulator was not involved in the 12 smog tests at issue, finding it at Giselle Smog Check lends support to the other evidence that the 12 vehicles were clean-plugged. Respondent's arguments of the insufficiency of the BAR's investigation, evidence, and analysis lack persuasive force as compared to this evidence.

Costs

27. Complainant presented certifications stating that the Department of Justice has billed the BAR \$12,267 concerning the case through July 25, 2024, and that the BAR incurred an additional \$4,102.80 in investigating it, for a total of \$16,369.80. The costs are reasonable.

28. Except as set forth in this Decision, all other allegations in the Accusation and all other contentions by the parties lack merit or constitute surplusage.

LEGAL CONCLUSIONS

Jurisdiction

1. The expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to issue a decision temporarily or permanently invalidating (suspending or revoking) a registration. (Bus. & Prof. Code, §§ 118, subd. (b), 9884.13, and 9889.7.)

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2. The Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44002.)

3. The expiration or suspension of a license by operation of law, or by order or decision of the Director of the Department, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with a disciplinary action. (Health & Saf. Code, § 44072.6)

Burden and Standard of Proof

4. The burden of proving the charges in an administrative disciplinary proceeding is on the party making the charges through the production of evidence. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175.) To impose discipline on a nonprofessional license, Complainant must prove cause for discipline by a preponderance of the evidence (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917 (*Imports Performance*), which means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri- Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

5. The automotive repair dealer registration as well as the smog check station and inspector licenses are nonprofessional licenses. An automotive repair dealer registration is a nonprofessional license because it does not require the extensive education, training, or testing necessary to obtain a professional license. (See *Imports Performance, supra*, 201 Cal.App.4th at pp. 916-917; *Mann v. Dept. of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *San Benito Foods v. Veneman* (1996) 50

Cal.App.4th 1889, 1894.) An automotive repair dealer registration “shall” be issued to any person who simply applies for it and pays a fee. (Bus. & Prof. Code, § 9884.2.)

6. Similarly, smog check station and inspector licenses are also nonprofessional licenses because they do not have extensive educational, training, or testing requirements. (*Imports Performance, supra*, 201 Cal.App.4th at pp. 916-917.) An automotive repair dealer can become licensed as a smog test station by merely applying, paying a fee, and passing a BAR inspection. (Cal. Code Regs., tit. 16, § 3340.10.) While a smog check inspector license applicant is required to complete course work (Cal. Code Regs., tit. 16, § 3340.28, subd. (b)) and pass an examination (Cal. Code Regs., tit. 16, § 3340.29), these requirements are not similar to the “extensive educational, training and testing requirements” necessary obtain a professional license. (*Imports Performance, supra*, 201 Cal.App.4th at p. 916.)

Applicable Statutes

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

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or

misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. [¶] . . . [¶]

(4) Any other conduct which constitutes fraud. [¶] . . . [¶]

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

8. Similarly, the Director may suspend, revoke, or take other disciplinary action against a smog check station license or smog check inspector license "if the licensee, or any partner, officer, or director thereof, does any of the following: [¶] (a) Violates any section of this chapter [i.e., the Motor Vehicle Inspection Program, Health & Saf. Code, div. 26, pt. 5, ch. 5] and the regulations adopted pursuant to it, which related to the licensed activities. [¶] . . . [¶] (c) Violates any of the regulations adopted by the director pursuant to this chapter. [¶] (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured....." (Health & Saf. Code, § 44072.2.)

9. Health and Safety Code section 44012 requires the tests at a smog check station be performed in accordance with procedures prescribed by the department, pursuant to Health and Safety Code section 44013.

10. Health and Safety Code section 44015, subdivision (b), provides that a certificate of compliance shall be issued if a vehicle meets the requirements of Health and Safety Code section 44012.

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11. Health and Safety Code section 44032 requires qualified technicians to perform tests of emission control devices and systems in accordance with section 44012.

12. Health and Safety Code section 44059 provides:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

13. When a license has been revoked or suspended following a hearing under this article, any additional licenses issued under this chapter in the name of the licensee may be likewise revoked or suspended by the Director. (Health & Saf. Code, § 44078.2.)

Applicable Regulations

14. The BAR "may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance." (Cal. Code Regs, tit. 16, § 3340.24.)

15. A licensed smog check inspector shall comply with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42 when testing vehicles. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).)

16. A licensed smog check station "shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article [which sets forth specific emissions test methods and procedures which apply to all vehicles inspected in the State of California] and has all the required emission control equipment and devices installed and functioning correctly." (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

17. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides, "No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested."

"Fraud" Interpretation and Meaning

18. Administrative discipline for "fraud" is authorized pursuant to Business and Profession Code sections 9884.7 and 9889.3, as well as Health and Safety Code section 44072.2. "Fraud" is either "actual" or "constructive." (Civ. Code, § 1571.) Actual fraud includes "an intent to deceive another party....." (Civ. Code, § 1572.) Constructive fraud includes "any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault.....by misleading another to his prejudice....." (Civ. Code, § 1573.)

19. Fraud may be established by direct evidence or it may be inferred from the total circumstances of the case. (*Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674-675.) A finding of what constitutes fraud is dependent on the specific facts of a matter and is therefore not limited by an absolute or fixed rule. As applicable to this matter,

the Automotive Repair Act does not limit the term “fraud” to actual fraud. To limit the term “fraud” to such an interpretation is contrary to the paramount legislative purpose of the Automotive Repair Act of protecting consumers. (Bus. & Prof. Code, § 9880.3.)

Causes For Discipline

20. Complainant established through a preponderance of the persuasive and un rebutted evidence that Respondent’s 12 smog tests were the product of “clean plugging,” which is fraudulent conduct. (Factual Findings 17-20, 26.)

RESPONDENT’S AUTOMOTIVE REPAIR DEALER REGISTRATION

21. There is cause for the Director to revoke or suspend Respondent’s automotive repair dealer registration for the 12 smog tests set forth above for the following reasons:

- a. First Cause for Discipline: making or authorizing statements that Respondent in the exercise of reasonable care should have known to be untrue or misleading, by certifying that the 12 vehicles had passed inspection and complied with applicable laws and regulations, when those vehicles had not been properly inspected. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).)
- b. Second Cause for Discipline: fraud, by issuing electronic smog certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).)

- c. Third Cause for Discipline: materially violating the Automotive Repair Act and applicable adopted regulations by issuing certificates of compliance for the 12 vehicles without properly inspecting those vehicles. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).)

RESPONDENT'S SMOG CHECK STATION LICENSE

22. There is cause for the Director to revoke or suspend Respondent's smog check station license for the 12 smog tests set forth above for the following reasons:

- a. Fourth Cause for Discipline: violation of the Motor Vehicle Inspection Program. Respondent's violations included failing to ensure that the emission control tests complied with Department procedures (Health & Saf. Code, § 44012) and issuing certificates of compliance without properly testing and inspecting the vehicles (Health & Saf. Code, § 44015, subd. (b)). (Health & Saf. Code, § 44072.2, subd. (a)).
- b. Fifth Cause for Discipline: violation of regulations pursuant to the Motor Vehicle Inspection Program. Respondent's violations include committing acts involving dishonesty, fraud, or deceit whereby another is injured, by issuing electronic smog certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles as required by Health and Safety Code section 44012 (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); issuing electronic smog certificates

of compliance even though the 12 vehicles had not been inspected in accordance with Health and Safety Code section 3340.42 (Cal. Code Regs., tit. 16, § 3340.35, subd. (c)); and failing to conduct the required and inspections of the 12 vehicles in accordance with the BAR's specification. (Cal. Code Regs., tit. 16, § 3340.42.)

- c. Sixth Cause for Discipline: committing acts involving dishonesty, fraud, or deceit whereby another is injured, by issuing electronic smog certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the 12 vehicles, thereby depriving the people of the State of California of the protections afforded by the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (d).)
- d. Seventh Cause for Discipline: fraudulently certifying and participating in the fraudulent inspection of the 12 vehicles. (Health & Saf. Code, § 44072.10, subd. (c).)

RESPONDENT'S SMOG CHECK INSPECTION LICENSE

23. There is cause for the Director to revoke or suspend Respondent's smog check station license for the 12 smog tests set forth above for the following reasons:

- a. Eighth Cause for Discipline: violations of the Motor Vehicle Inspection Program. The violations included failures to perform the smog tests in accordance with procedures prescribed by the Department, issuing electronic smog

certificates without properly testing and inspecting the 12 vehicles to determine if they were in compliance with Health and Safety Code section 44012, failing to perform tests of the onboard diagnostic systems of the 12 vehicles in accordance with Health and Safety Code section 44012, and willful false entries on the electronic smog certificates of compliance. (Health & Saf. Code, §§ 44012, 44015, subd. (b), 44032, 44059, and 44072.2, subd. (a)).

- b. Ninth Cause for Discipline: violation of regulations adopted under the Motor Vehicle Inspection Program. Respondent's violations of Health & Safety Code, sections 44072.2, subdivision (c), included failing to test and inspect the 12 vehicles in accordance with Health and Safety Code sections 44012 and California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.30, subdivision (a), 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42 and failing to perform smog check inspections as prescribed in the operative Smog Check Manual (Cal. Code Regs., tit. 16, § 3340.45.).
- c. Tenth Cause for Discipline: committing acts involving dishonesty, fraud, or deceit whereby another is injured, by issuing electronic smog certificates of compliance for 12 vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the people of the State of California of

the benefits of the Motor Vehicle Inspection Program.
(Health & Saf. Code, § 44072.2, subd. (d).)

- d. Eleventh Cause for Discipline: fraudulently certifying and participating in the fraudulent inspection of the 12 vehicles.
(Health & Saf. Code, § 44072.10, subd. (c).)

Disciplinary Action

24. The object of administrative license discipline is not to punish the licensee; the primary purpose of these proceedings is to protect the public. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817; see also *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448-450; *Imports Performance, supra*, 201 Cal.App.4th at p. 919.)

25. By statute, the Department is required to revoke the license of any smog check technician or station licensee who fraudulently certifies or participates in the fraudulent inspection of vehicles. (Health & Saf. Code, § 44072.10, subd. (c).) The Bureau's Guidelines for Disciplinary Orders and Terms of Probation (rev. March 2016) (Guidelines) also recommend the revocation of any applicable automotive repair dealer registration for a station licensee for such fraud. (Guidelines, p. 8.)

26. Respondent performed 12 fraudulent smog tests at Giselle Smog Check and, as a result, issued 12 fraudulent certificates of compliance. Respondent's violations were numerous and serious. Respondent provided no assurances to the BAR that Respondent will operate lawfully in the future. There was no evidence presented by Respondent of changed procedures or practices since the Accusation was issued. Respondent presented no evidence of rehabilitation. Under these circumstances, the

goal of public protection requires the revocation of Respondent's registration and licenses, not a probationary period.

Costs

27. Business and Professions Code section 125.3 provides, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. [¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

28. California Administrative Code, California Code of Regulations, title 1, section 1042, provides, in pertinent part:

(b) Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration. [¶] . . . [¶]

(4) The ALJ may permit a party to present testimony relevant to the amount and reasonableness of costs. [¶] . . . [¶]

(c) The proposed decision shall include a factual finding and legal conclusion on the request for costs and shall state the reasons for denying a request or awarding less than the amount requested. Any award of costs shall be specified in the order.

29. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court provided four factors the board was required to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the

hearing process to obtain dismissal of the charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments.

30. The *Zuckerman* criteria were applied in this proceeding. Respondent presented no evidence to challenge the prima facie evidence that Complainant's certification of the BAR's enforcement and investigatory costs was reasonable. In addition, Respondent did not obtain a reduction in the severity of discipline imposed from the maximum discipline, revocation, sought by the Accusation. The BAR's investigation was reasonable based on the violations. It is evident, however, that Respondent will be financially negatively impacted by the discipline of revocation, which will prevent Respondent from being able to pursue his current livelihood. Directing Respondent to pay costs reduced by twenty-five percent, totaling \$12,277.35, is therefore justified.

Additional Matters

31. Complainant requests an order against Respondent revoking or suspending all additional Automotive Repair Dealer Registrations issued in the name of Zamorano. Business and Professions Code section 9884.7, subdivision (c), provides, "[T]he director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of [the Automotive Repair Act], or regulations adopted pursuant to it." Complainant's request is granted because the evidence established 12 willful and similar violations of the Automotive Repair Act.

32. Complainant also requests an order against Respondent revoking or suspending all licenses issued under the Motor Vehicles Inspection Program issued in the name of Zamorano. Health and Safety Code section 44072.8 provides, "[w]hen a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter [i.e., the Motor Vehicle Inspection Program] in the name of the licensee may be likewise revoked or suspended by the director." Complainant's request is granted because the presented evidence supports the revocation of any additional licenses Respondent holds under the Motor Vehicle Inspection Program.

ORDER

1. Automotive Repair Dealer Registration No. ARD 298798, issued to respondent Arturo Zamorano, dba Giselle Smog Check, is revoked.
2. Smog Check, Test Only, Station License No. TC 298798, issued to respondent Arturo Zamorano, dba Giselle Smog Check, is revoked.
3. Any other automotive repair dealer registration issued to Arturo Zamorano is revoked. (Bus. & Prof. Code, § 9884.7, subd. (c).)
4. Any additional license issued to Arturo Zamorano under the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000, et seq.) is revoked. (Health & Saf. Code, § 44072.8.)
5. Smog Check Inspector License No. EO 643569, issued to Arturo Zamorano, is revoked.

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6. Respondent Arturo Zamorano dba Giselle Smog Check and Arturo Zamorano shall pay the Bureau of Automotive Repair \$12,277.35 for the reasonable costs of the investigation and enforcement of this case within 90 days of the effective date of this order.

DATE: 03/26/2025

Signed Copy on File

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings