

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

In the Matter of the Accusation Against:

RAFAEL HERNANDEZ, dba HERNANDEZ SMOG CHECK

Automotive Repair Dealer Registration No. ARD 300844

Smog Check, Test Only, Station License No. TC 300844

and

MYNOR ROCAEL MORALES REYES

Smog Check Station License No. EO 641489

Respondents

Agency Case No. 79/25-2826

OAH No. 2025070117

PROPOSED DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH),
State of California, heard this matter by videoconference on March 3, 2026.

Complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, was represented by Michael Brown, Deputy Attorney General.

William Ferreira, Attorney at Law, represented Rafael Hernandez (Respondent Hernandez), doing business as Hernandez Smog Check (Hernandez Smog) and Mynor Rocael Morales Reyes (Respondent Morales Reyes) (collectively, Respondents), who were not present for the hearing.

Testimony and documentary evidence were received. The record was closed and the matter was submitted for decision on March 3, 2026.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 7, 2021, the Bureau issued Automotive Repair Dealer Registration Number ARD 300844 to Respondent Hernandez, doing business as Hernandez Smog. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2026, unless renewed.

2. On March 11, 2022, the Bureau issued Smog Check, Test Only, Station License Number TC 300844 to Hernandez Smog. The license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2026, unless renewed.

3. On June 23, 2022, the Bureau certified Hernandez Smog as a STAR station. The Bureau's STAR program establishes performance standards that smog check stations must meet to become STAR certified. (Cal. Code Regs., tit. 16, § 3392.1

et seq.) This certification remains in effect unless the Automotive Repair Dealer Registration and/or Smog Check Station License is revoked, canceled, becomes delinquent, or the certification is otherwise invalidated.

4. On October 24, 2018, the Bureau issued Smog Check Inspector License Number EO 641489 to Respondent Morales Reyes. The license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2026, unless renewed.

5. In 2004, the Bureau issued Advanced Emission Specialist Technician (EA) License Number 150132 (EA License) was issued to an individual identified as "Mynor Rocael Morales." The EA License was due to expire on May 31, 2013, but was cancelled on April 15, 2013, and renewed upon that individual's election as a Smog Check Inspector (EO) under License Number 150132 and as a Smog Check Repair Technician (EI) under License Number 150132, both effective April 15, 2013. The EO License and EI License were revoked on September 27, 2016.

6. Complainant did not allege any facts about the EA license or present any evidence to establish that "Mynor Rocael Morales" is the same individual as Respondent Morales Reyes. The licensing documentation, Exhibit 30 and 31, was uploaded to Case Center during the hearing, but no motion was made to amend the Accusation to allege that Respondent Morales Reyes was the individual associated with the EA License. Accordingly, no finding is made that Respondent Morales Reyes was licensed by the Bureau as "Mynor Rocael Morales."

Smog Check Inspections

7. Smog check inspections are a central component of California's Motor Vehicle Inspection Program, codified in Health and Safety Code sections 44000

through 44126. Federal and California agencies, including the Bureau, collaborate to implement and enforce the program through regulations at California Code of Regulations, title 16, section 3340.1 et seq.

8. The program requires owners of most motor vehicles to obtain a Certificate of Compliance every two years upon registration renewal and upon transfer of title by submitting to a smog check inspection at a BAR-licensed station performed by a BAR-licensed inspector. The program is designed to identify vehicles that exceed emissions standards and require their repair or removal from operation. As of May 1, 2023, inspectors must use biometric palm scanner authentication to access inspection systems.

9. Inspections consist of a visual inspection, a functional test, and on-board diagnostic (OBD) testing, depending on the vehicle.

10. For most model-year 2000 and newer gasoline and hybrid vehicles and model-year 1998 and newer diesel vehicles, inspections are conducted using the On-Board Diagnostic Inspection System (BAR-OIS), required statewide beginning March 9, 2015. The BAR-OIS, consisting of a data acquisition device (DAD), retrieves vehicle diagnostic data directly from the vehicle through the data link connector (DLC), including the electronic VIN (eVIN), communication protocol, readiness monitors, diagnostic trouble codes (DTCs), and parameter identification data (PIDs), excluding sensitive data such as location information. A continuous internet connection is required. The inspector must sign the printed Vehicle Inspection Report (VIR), which reflects the test results and Certificate of Compliance number for passing vehicles.

11. All inspection results are transmitted to BAR's Vehicle Information Database (VID), which contains DMV registration data, emissions standards, inspection

history, station and inspector records, and Certificates of Compliance. Each certificate carries a unique control number traceable to the issuing station and vehicle. Passing results are electronically transmitted to the DMV; failing vehicles must be repaired before certification.

12. Some stations and inspectors fraudulently issue certificates through “clean piping,” “clean gassing,” or “clean plugging.” Clean plugging uses another vehicle’s functioning OBD system or a defeat device to transmit falsified diagnostic data, allowing a noncompliant or absent vehicle to appear to pass inspection. These practices are strictly prohibited because they undermine the program’s emissions-reduction purpose.

Prior Visits

13. Before the investigation at issue, Bureau representatives inspected Hernandez Smog and evaluated its equipment and operations on multiple occasions as described below.

14. During an initial field visit on March 10, 2022, Representative Oran Medina met with Respondent Hernandez. The only deficiency noted at that time was that Hernandez Smog was “[m]issing TSB access.” (Exh. 6.) The facility “pass[ed]” its inspection. (*Ibid.*)

15. On September 1, 2022, Representative Marc Ortega and Smog Check Inspector Stephen Talbot met with Respondent Hernandez regarding a BAR-OIS lockout of Hernandez Smog due to anomalous data. During the visit, it was determined there were numerous equipment deficiencies as follows: (1) the DAD DT003624 failed its self-diagnostics, (2) the BAR-97 failed gas calibration, (3) the Dyno lift guide was modified; (4) the Dyno scale was not in serviceable condition; (5) the

BAR-97 printer was inoperative, (6) Low-Pressure Fuel Evaporative Test (LPFET) bent tip pliers were missing; and (7) LPFET nitrogen gas bottle regulator was damaged. (Exh. 7.) (Smog technicians are required to perform a LPFET on most vehicles manufactured between 1976 and 1995 as part of the smog inspection.) The other identified deficiencies that were unrelated to the equipment are not listed.

16. On January 30, 2023, Representative Ortega visited the facility and met with Respondent Hernandez and Technician Andy Cerriteno regarding anomalous data transmitted during smog inspections associated with old equipment (model numbers CV019567 and DAD DT003624), which resulted in a BAR-OIS lockout. The BAR-OIS platform had been replaced with new equipment (model numbers CV020789 and DAD DT001354), which passed self-testing. The old equipment was not located at the facility and remained locked out. (Exh. 8.)

17. On June 20, 2023, Representative Gustavo Romo met with Respondent Hernandez (identified in the report as Rafael Hernandez Carrasco). All required smog inspection tools, equipment, and manuals were present, and the smog equipment was properly calibrated and the facility "pass[ed]" its inspection. (Exh. 8.)

18. On January 16, 2025, Representative Arnaldo Acosta met with Respondent Morales Reyes and performed a quality assurance inspection. The facility had replaced its ESP BAR-97 with a WorldWide BAR-97 unit and Hernandez Smog passed its inspection. (Exh. 10.)

Board Investigation

19. David Martindelcampo, Program Representative III, Enforcement Division of the Bureau, has been employed by the Bureau for more than 26 years. As part of his role, he reviews the data transmitted by smog check stations.

20. Representative Martindelcampo explained that during a BAR-OIS smog inspection, the system connects to the car's On-Board Diagnostic, Generation II (OBD II) computer by plugging a DAD into the car's port (DLC). It collects engine data, such as engine speed (RPM), throttle position (how much the gas pedal is pressed), air pressure, airflow, and ignition timing, and sends that data to the state database (VID).

21. When the engine is idling, these values stay steady. When the inspector presses the gas pedal, the throttle opens, which increases airflow, engine speed, and related measurements in a predictable way. The test checks that these changes happen consistently, confirming the data is coming from a real, properly functioning engine.

22. In February 2025, Representative Martindelcampo noted anomalies in the data transmitted by Respondent Hernandez Smog and conducted an investigation. He found that there was a pattern of vehicles being certified by Respondent Hernandez Smog with engine operating parameters that did not correspond to normal engine operation. The data collected by the DAD during the OBD II functional test confirmed that an OBD defeat device was used instead of the actual vehicle being tested, which constitutes clean plugging. Based on these results, Representative Martindelcampo determined that Respondent Morales Reyes entered false information into the state computer database utilizing Respondent Hernandez Smog's BAR OIS platform.

VEHICLES 1-10

23. Representative Martindelcampo selected 10 vehicles that had been issued smog check certificates of compliance that appeared to be fraudulent. Representative Martindelcampo accessed the VID for copies of the Smog Check Vehicle Inspection Reports, OIS Test Details, and Certificate Sales, and determined that

Respondent Morales Reyes entered false information into the state computer database utilizing Respondent Hernandez Smog's BAR-OIS platform.

24. Vehicle 1 - 2003 Chevrolet S10: On August 6, 2024, Respondent Morales Reyes performed a smog check inspection of Vehicle 1 (CA license 63308S2, VIN 1GCCS19X138116469), and Smog Certificate No. UC030994C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (0.0%), MAP (45 kPa), MAF (6.67 gps), and ignition timing (16° BTDC) remained constant throughout the test. These readings are not characteristic of normal engine operation because increases in RPM require corresponding changes in throttle input, airflow, pressure, and timing. This data demonstrates that the Data Acquisition Device was not connected to the vehicle, resulting in the fraudulent issuance of a Certificate of Compliance.

25. Vehicle 2 - 2004 Volvo C70: On March 3, 2022, Vehicle 2 (CA license 7KOR074, VIN YV1NC62D64J046703) previously underwent a smog check inspection at another station, and the data showed expected changes in throttle, MAF, and ignition timing consistent with normal engine operation. On October 1, 2024, Respondent Morales Reyes performed a subsequent smog check inspection of Vehicle 2, and smog certificate no. JB287460C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (14.9%), MAF (5.25 gps), and ignition timing (5° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

26. Vehicle 3 - 2000 Toyota Sienna: On November 5, 2022, Vehicle 3 (CA license 5UKS991, VIN 4T3ZF13C3YU224906) previously underwent a smog check inspection at another station and failed because the vehicle's on-board computer

system had not completed the emission system's self-checks, with data showing expected variation in throttle, MAF, and ignition timing consistent with normal engine operation. On November 23, 2024, Respondent Morales Reyes performed a subsequent smog check inspection of Vehicle 3, and smog certificate no. UG618612C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (11%), MAF (4.13 gps), and ignition timing (14.5° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

27. Vehicle 4 - 2000 Toyota Tacoma: On November 23, 2024, Respondent Morales Reyes performed a smog check inspection of Vehicle 4 (CA license 30232U2, VIN 4TASM92N4YZ600937), and smog certificate no. UG618614C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (11%), MAF (3.21 gps), and ignition timing (13° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

28. Vehicle 5 - 2002 Chevrolet Blazer: On December 21, 2024, Respondent Morales Reyes performed a smog check inspection of Vehicle 5 (CA license 9NUJ786, VIN 1GNCS13W92K134856), and smog certificate no. JB638138C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (0.0%), MAP (36 kPa), MAF (4.58 gps), and ignition timing (16.5° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

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29. Vehicle 6 - 2001 Ford Mustang: On December 28, 2024, Respondent Morales Reyes performed a smog check inspection of Vehicle 6 (CA license 4PAP014, VIN 1FAFP404X1F142294), and smog certificate no. UI245634C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (18%), MAF (3.7 gps), and ignition timing (14.5° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

30. Vehicle 7 - 2001 GMC Safari: On December 31, 2024, Respondent Morales Reyes performed a smog check inspection of Vehicle 7 (CA license 7ZHJ556, VIN 1GKDM19W81B515177), and smog certificate no. UI396560C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (0.0%), MAP (35 kPa), MAF (3.96 gps), and ignition timing (18° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

31. Vehicle 8 - 2003 Ford Econoline: On January 15, 2024, Vehicle 8 (CA license 76876N2, VIN 1FTRE14W63HA04010) previously underwent a smog check inspection at another station, and the data showed expected variation in throttle, MAF, and ignition timing consistent with normal engine operation. On January 8, 2025, Respondent Morales Reyes performed a subsequent smog check inspection of Vehicle 8, and smog certificate no. JB819019C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (17.6%), MAF (4.37 gps), and ignition timing (19° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

32. Vehicle 9 - 2001 Ford Econoline: On January 11, 2025, Respondent Morales Reyes performed a smog check inspection of Vehicle 9 (CA license 95254J3, VIN 1FTRE14221HA61668), and smog certificate no. JB819046C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (20%), MAF (4.33 gps), and ignition timing (16° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

33. Vehicle 10 - 2003 Chevrolet Tahoe: On January 15, 2025, Respondent Morales Reyes performed a smog check inspection of Vehicle 10 (CA license 6SHP395, VIN 1GNEC13V43R213969), and smog certificate no. UI746884C was issued. The data transmitted shows that engine RPM increased significantly while throttle position (9.4%), MAP (37 kPa), MAF (4.99 gps), and ignition timing (19° BTDC) remained constant throughout the test. This pattern is inconsistent with normal engine operation and indicates the use of a substitute data source rather than the subject vehicle.

SITE VISITS

34. Representative Martindelcampo conducted an unannounced visit to Hernandez Smog on April 9, 2025. During the visit, he requested records from Hernandez Smog and interviewed Respondent Morales Reyes. Morales Reyes stated that he is the sole individual who performs smog inspections at the facility and that no one assists him or uses his BAR credentials or access. He also handles estimates, invoices, and payments. He denied ever engaging in "clean plugging," "clean piping," or using any device to fraudulently issue Certificates of Compliance. He further stated that he ensures the facility's DAD is properly connected to the vehicle's data link connector (DLC) and removes any aftermarket devices before testing. Representative

Martindelcampo did a visual scan of the facility but did not see any defeat devices on either the April 9, 2025, and April 16, 2025.

35. On April 16, 2025, the representative returned and reviewed records with Morales Reyes. Morales Reyes confirmed that he performed the smog inspections for the subject vehicles and signed the Vehicle Inspection Reports (VIRs), except for one report that lacked his signature but which he stated he completed. He also stated that he verifies vehicle identity using the license plate and VIN, inspects the DLC for tampering or attached devices, and requires repairs if the smog analyzer cannot communicate with the vehicle.

Respondent's Position

36. Respondents did not appear personally at the hearing and did not present testimony or documentary evidence to rebut Complainant's evidence. However, through counsel, Respondents argued that Complainant failed to prove the allegations by a preponderance of the evidence.

37. Respondents, through counsel, contended that the Bureau's case relied on anomalous data that, at most, establishes a basis for investigation rather than proof of misconduct. They argued there was no evidence that the subject vehicles would have failed a properly conducted smog inspection, no evidence of customer motive or related financial irregularities, and no corroborating evidence such as complaints, undercover operations, surveillance, or percipient witness testimony.

38. Respondents further asserted that the Bureau could not determine whether the anomalous data resulted from technician conduct or external factors, including possible equipment or data transmission issues. They noted that Bureau representatives conducted multiple inspections of the facility and did not locate any

defeat devices, and that prior equipment issues at Hernandez Smog could explain the irregularities.

39. Finally, Respondents emphasized the absence of prior disciplinary history for both Respondent Morales Reyes and Respondent Hernandez, and argued it was unlikely that Morales Reyes would engage in a complex fraudulent scheme under these circumstances.

40. Based on these points, Respondents maintained that the Bureau's evidence was insufficient to establish intentional or willful misconduct.

Costs

41. Pursuant to Business and Professions Code section 125.3, Complainant submitted a Certification of Prosecution Costs and Declaration of Michael Brown (Declaration), requesting actual billed prosecution costs of \$5,631.75, and estimated costs of \$2,052, for a total of \$7,683.75. With respect to complainant's request for estimated costs, as actual costs could have been presented, a good faith estimate is insufficient and is disallowed. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(3).)

42. Complainant also submitted a Declaration from Representative Martindelcampo requesting investigative costs of \$6,486.48. Attached to the declaration was a description of the services performed. The costs provided in the declaration and schedule are also found to be reasonable.

43. Based on the foregoing, the Bureau's reasonable costs of investigation and prosecution of this matter are \$12,118.23.

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LEGAL CONCLUSIONS

Jurisdiction and Standard of Proof

1. Jurisdiction to proceed in this matter exists under Business and Professions Code section 9884.7 (which relates to ARD registrations), as well as Health and Safety Code sections 44002 and 44072.2 (which relate to smog check station and inspector licenses), based on Factual Findings 1 through 5.

2. Complainant has the burden of proving cause for discipline against Respondent by a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

Applicable Law

3. Business and Professions Code section 9884.7, subdivision (a), allows the Bureau to discipline the registration of an automotive repair dealer for various types of misconduct, including making false or misleading statements, engaging in acts constituting fraud, or failing in any material respect to comply with the Automotive Repair Act or its regulations.

4. Under Health and Safety Code section 44072.2, subdivisions (a), (c), (d), and (g), the Bureau may revoke the licenses of a smog check station or a smog check inspector for violating any statutes or regulations related to the license, for committing any act involving dishonesty, fraud, or deceit whereby another is injured, such as participating in the fraudulent certification or inspection of a vehicle, or for failure to make available for inspection by the director or a duly authorized representative records showing his transactions as a licensee.

5. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), an ARD registration may be invalidated “where the automotive repair dealer cannot show there was a bona fide error,” and conduct that constitutes fraud is done by the automotive repair dealer “or any automotive technician [or] employee . . . of the automotive repair dealer.” Under Business and Professions Code section 9884.7, subdivision (a)(6), an ARD may be invalidated where the automotive repair dealer fails in any material respect to comply with the Automotive Repair Act or regulations adopted pursuant to it.

6. Pursuant to Health and Safety Code section 44035, a smog check station’s license or a smog check inspector’s license may be suspended or revoked, after hearing, for failing to meet the standards prescribed for qualification, equipment, performance, or conduct. Under Health and Safety Code section 44072.2, subdivision (d), the licenses of a smog check station and a smog check inspector can be suspended for committing any act involving dishonesty, fraud, or deceit whereby another is injured. Under Health and Safety Code section 44072.10, subdivision (c), the licenses of a smog check station and a smog check inspector “shall be revoked” for fraudulent certification of a vehicle or a fraudulent inspection.

7. “Fraudulent inspection” is defined as including “[c]lean piping, as defined by the department,” or “[i]ntentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.” (Health & Saf. Code, § 44072.10, subd. (c)(1) & (4).)

8. Although Health and Safety Code section 44072.10, subdivision (c)(1), includes the Legislature’s determination, as a matter of law, that a fraudulent inspection has occurred when a vehicle has been clean piped, no such legislative conclusion is included for clean plugging. However, the statute also concludes that,

when a licensee engages in an intentional or willful violation of the law, there has been a “fraudulent inspection,” as defined in Health and Safety Code section 44072.10, subdivision (c)(4).

9. The term “willful” is not defined in either the Business and Professions Code or the Health and Safety Code. When a term used within one legislative code is not defined in that code, the term may be defined by reference to a different code. (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 554.) Penal Code section 7, subdivision (1) states: “1. The word ‘willfully,’ when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.” “The evil therefore is not in the intent to do harm, but in falsely certifying facts which are not true.” (*Brown v. State Department of Health, supra*, at p. 555 [referring to false statements in Medi-Cal bills].) “The terms ‘willful’ or ‘willfully’ imply ‘simply a purpose or willingness to commit the act . . .,’ without regard to motive, intent to injure, or knowledge of the act’s prohibited character. [Citation.] The terms imply that the person knows what he is doing, intends to do what he is doing, and is a free agent. [Citation.] Stated another way, the term ‘willful’ requires only that the prohibited act occur intentionally. [Citations.]” (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438 [Penal Code section prohibiting willful discharge of a firearm in a grossly negligent manner was not violated because the defendant did not think it was loaded, negating the mental state of intent to fire the gun to expel a bullet].)

10. In *Acco Engineered Systems, Inc. v. Contractors’ State License Bd.* (2018) 30 Cal.App.5th 80, the court recognized that the definition of “willfully” from Penal Code section 7 has been adopted in other cases involving discipline of licensees in

other professions and would be applied to statutes describing violations by contractors. The court rejected the argument that liability should be precluded where a licensee acted in good faith. The court found that the Legislature's use of the term "willful" in a statute only required a showing of a general intent to act.

Analysis

11. Although Respondents do not dispute that the applicable standard of proof is a preponderance of the evidence, their argument effectively demands the kind of direct, concrete evidence, such as a recovered defeat device, undercover surveillance, or customer complaints. This argument is unpersuasive. Under the preponderance standard, such evidence is not necessarily required, and Complainant is not required to eliminate all alternative explanations or produce direct evidence of misconduct. It is sufficient that the evidence renders the existence of the disputed facts more probable than not. Administrative findings may properly rest on circumstantial evidence where, as here, it establishes the most reasonable inference.

12. The evidence establishes a consistent and highly specific pattern across 10 separate inspections performed by Respondent Morales Reyes. In each instance, engine RPM increased significantly while throttle position, airflow, pressure, and ignition timing remained static, a combination that is physically inconsistent with normal engine operation and demonstrates that the data transmitted during these inspections did not originate from the subject vehicles. This uniform anomaly establishes that Respondent Morales Reyes utilized a substitute data source during the inspections, rendering each Certificate of Compliance fraudulently issued.

13. The evidence establishes that Respondent Morales Reyes engaged in clean plugging, which constitutes a fraudulent inspection within the meaning of Health

and Safety Code section 44072.10, subdivision (c). The repeated and uniform nature of the anomalies across 10 inspections on multiple dates demonstrates that the results were not accidental but were deliberately generated to indicate that the vehicles passed inspection and to support the issuance of Certificates of Compliance. Accordingly, the evidence establishes that Respondent Morales Reyes willfully engaged in fraudulent inspections with the intent to pass the subject vehicles and issue Certificates of Compliance.

14. Respondents' contention that the anomalous data may have resulted from technician conduct or external factors is not supported by the record. Although Respondents suggest possible equipment malfunction or data transmission issues, those possibilities are inconsistent with the evidence. The anomalies observed were uniform across multiple vehicles, inspection dates, and test conditions, reflecting a stable and repeatable pattern rather than intermittent or random error. Equipment malfunction would be expected to produce irregular or inconsistent data, not mechanically consistent readings in which engine RPM increases without corresponding changes in throttle position, airflow, pressure, or ignition timing. The most reasonable inference from this evidence is that the data was intentionally substituted rather than generated by a malfunctioning system.

15. Respondents' arguments regarding lack of motive, absence of prior failed inspections, and lack of disciplinary history are likewise unavailing. Proof of motive is not required to establish misconduct, and the absence of prior discipline does not preclude a finding that misconduct occurred in the instances at issue.

16. Respondent Morales Reyes was the sole inspector at Hernandez Smog, performed all 10 fraudulent inspections, signed the VIRs, and controlled exclusive access to his BAR credentials. No other person performed inspections or had access to

his credentials. Accordingly, the evidence establishes by a preponderance of the evidence that Respondent Morales Reyes engaged in clean plugging and fraudulently issued Certificates of Compliance for each of the 10 subject vehicles.

17. 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.) By virtue of ownership of a license, the owner has a responsibility to ensure that the license is not used in violation of the law. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360.) Respondent Hernandez, as the owner of Hernandez Smog and holder of the station licenses, was responsible for ensuring that inspections conducted under those licenses complied with statutory and regulatory requirements. This responsibility exists regardless of whether he personally performed the inspections or had actual knowledge of the misconduct. Accordingly, Respondent Hernandez is responsible for the fraudulent inspections conducted by Respondent Morales Reyes.

Cause for Discipline

18. First Cause for Discipline - Untrue or Misleading Statements:
Complainant established by a preponderance of evidence that grounds exist to discipline Hernandez Smog's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), and California Code of Regulations, title 16, section 3373, in that between August 6, 2024 through January 15, 2025, Hernandez Smog falsely represented that Vehicles 1 through 10 had been properly inspected and met applicable emissions requirements when issuing certificates of compliance as set forth in Factual Findings 19 through 35 and Legal Conclusions 11 through 17.

19. Second Cause for Discipline – Fraud: Complainant established by a preponderance of evidence that grounds exist to discipline Hernandez Smog’s registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that between August 6, 2024 through January 15, 2025, Hernandez Smog issued certificates of compliance without performing bona fide inspections, instead relying on substituted or simulated data as set forth in Factual Findings 19 through 35 and Legal Conclusions 11 through 17.

20. Third Cause for Discipline - Material Violation of the Automotive Repair Act: Complainant established by a preponderance of evidence that grounds exist to discipline Hernandez Smog’s registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), in that certificates of compliance without conducting required inspections, as set forth in Factual Findings 19 through 35 and Legal Conclusions 11 through 17.

21. Fourth Cause for Discipline - Failure to Comply with the Motor Vehicle Inspection Program: Complainant established by a preponderance of evidence that grounds exist to discipline Hernandez Smog’s license pursuant to Health and Safety Code section 44072.2, subdivision (a), by failing to comply with the following Health and Safety Code provisions: (1) Section 44012-Hernandez Smog failed to ensure the emission control tests were performed in accordance with procedures prescribed by the Bureau in its inspection of Vehicles 1 through 10; (2) Section 44015, subdivision (b)-Hernandez Smog issued electronic smog certificates of compliance for Vehicles 1 through 10; (3) Section 44059-Hernandez Smog willfully made false entries for the electronic smog certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

22. Fifth Cause for Discipline - Failure to Comply with Regulations: Complainant established by a preponderance of evidence that grounds exist to discipline Hernandez Smog's license pursuant to Health and Safety Code section 44072.2, subdivision (c), by failing to comply with the following provisions of California Code of Regulations, title 16, as follows: (1) Section 3340.24, subdivision (c)- Hernandez Smog falsely or fraudulently issued electronic smog certificates of compliance for Vehicles 1-10 without performing bona fide inspections of the emission control devices and systems on the vehicles as required by Health and Safety Code section 44012; (2) Section 3340.35, subdivision (c): Hernandez Smog issued electronic smog certificates of compliance to Vehicles 1-10 even though those vehicles had not been inspected in accordance with Regulation 3340.42; (3) Section 3340.41. subdivision (c): Respondent Hernandez Smog knowingly entered false information into the emissions inspection system for Vehicles 1 through 10; (4) Section 3340.42: Hernandez Smog failed to conduct the required smog tests and inspections on Vehicles 1 through 10 in accordance with the Bureau's specifications.

23. Sixth Cause for Discipline - Dishonesty, Fraud, or Deceit: Complainant established by a preponderance of evidence that grounds exist to discipline Hernandez Smog's license pursuant to Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that between August 6, 2024, and January 15, 2025, Hernandez Smog committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of compliance for Vehicles 1 through 10 without performing bona fide inspections of their emission control devices and systems.

24. Seventh Cause for Discipline - Violations by Respondent Morales Reyes: Complainant established by a preponderance of evidence that grounds exist to

discipline Respondent Morales Reyes's smog inspector license pursuant to Health and Safety Code section 44072.2, subdivision (a), in that between August 6, 2024, and January 15, 2025, Respondent Morales Reyes violated the following Health and Safety Code sections in his inspection of Vehicles 1 through 10: (1) Section 44012, subdivision (a), by failing to determine that all emission control devices and systems required by law were installed and functioning correctly on Vehicles 1 through 10 in accordance with test procedures prescribed by the Bureau; (2) Section 44012, subdivision (f), by failing to perform emission control tests on Vehicles 1 through 10 in accordance with procedures prescribed by the Bureau; (3) Section 44032, by failing to perform tests of the emission control devices and systems on Vehicles 1 through 10 in accordance with Health and Safety Code section 44012, in that the vehicles had been clean plugged; and (4) Section 44059, by willfully making false entries for the electronic certificates of compliance by certifying that Vehicles 1 through 10 had been inspected as required when, in fact, they had not.

25. Eighth Cause for Discipline - Regulatory Violations by Respondent Morales Reyes: Complainant established by a preponderance of evidence that grounds exist to discipline Respondent Morales Reyes's smog inspector license pursuant to Health and Safety Code section 44072.2, subdivision (c) in that between August 6, 2024, and January 15, 2025, Respondent Morales Reyes violated the following provisions of California Code of Regulations, title 16, as follows: (1) Section 3340.24, subdivision (c), by falsely or fraudulently issuing electronic smog certificates of compliance without performing bona fide inspections of the emission control devices and systems of Vehicles 1 through 10; (2) Section 3340.30, subdivision (a), by failing to inspect and test Vehicle 1 through 10 in accordance with Health and Safety Code sections 44012; (3) Section 3340.41, subdivision (c), by knowingly entering false information into the emissions inspection system for Vehicle 1 through 10; and (4)

Section 3340.42, by failing to conduct the required smog tests and inspections on Vehicle 1 through 10 in accordance with the Bureau's specifications.

26. Ninth Cause for Discipline - Dishonesty, Fraud, or Deceit by Respondent Morales Reyes: Complainant established by a preponderance of evidence that grounds exist to discipline Respondent Morales Reyes's smog inspector license pursuant to Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), in that Respondent Morales Reyes engaged in dishonest and fraudulent conduct by issuing certificates of compliance without performing bona fide inspections and by participating in clean plugging.

Level of Discipline

27. The purpose of proceedings of this type is to protect the public. (See, e.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161,164.)

28. Here, the misconduct established is serious and involves repeated fraudulent conduct in the performance of regulated smog inspections. Such conduct undermines the integrity of the smog check program and poses a risk to the public and the regulatory system as a whole.

29. No evidence of mitigation was presented. Respondents did not submit testimony or documentary evidence demonstrating rehabilitation, corrective measures, or other mitigating factors. Based on this record, the public can be protected only by the revocation of all BAR-related licenses and registrations held by Respondents.

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Other Matters

30. All other ARD registrations held by Respondent Hernandez may be disciplined pursuant to Business and Professions Code section 9884.7, subdivision (c), for the violations established herein.

31. Any other licenses issued to Respondents pursuant to Chapter 5 of Part 5 of Division 26 of the Health and Safety Code may be revoked or disciplined as a result of the revocation of his licenses that are the subject of this proceeding, based on Health and Safety Code section 44072.8.

Costs

32. Pursuant to Business and Professions Code section 125.3, the Bureau 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. The Bureau's costs of \$12,118.23, are reasonable. (Finding 43.)

33. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the guidelines for the determining whether the 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 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 it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.*, at pp. 44-45.) Here, the misconduct committed by Respondents was egregious and repetitive. Respondents presented no evidence

supporting a finding or conclusion that Respondents are unable to pay the Bureau's costs of investigation or enforcement.

ORDER

1. Automotive Repair Dealer Registration Number ARD 300844, issued to Rafael Hernandez-Owner dba Hernandez Smog Check, and any other automotive repair dealer registration issued to Rafael Hernandez is revoked.

2. Smog Check, Test Only, Station License Number TC 300844, issued to Rafael Hernandez-Owner dba Hernandez Smog Check is revoked, and any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Rafael Hernandez is revoked.

3. Smog Check Inspector License Number EO 641489, issued to Mynor Rocael Morales Reyes, and any additional; license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Mynor Rocael Morales Reyes is revoked.

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4. Respondent Rafael Hernandez, doing business as Hernandez Smog Check, and Respondent Mynor Rocaél Morales Reyes are jointly and severally liable to pay to the Bureau the sum of \$12,118.23, as reimbursement for investigative and enforcement costs.

DATE: **04/02/2026**

Signed Copy on File

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings