

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

In the Matter of the Accusation Against:

TRIEU D. NGUYEN dba TDN SMOG CHECK

21 N. Sunset Ave.

San Jose, CA 95116

Mailing Address:

1120 Park View Drive

Milpitas, CA 95035

Automotive Repair Dealer Registration No. ARD 300872

Smog Check Test Only Station License No. TC 300872

TRIEU NGUYEN

1120 Park View Drive

Milpitas, CA 95035

Smog Check Inspector License No. EO 642618

Respondents.

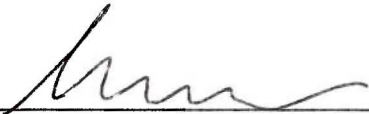
Case No. 79/22-11142

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 September 17, 2025.

IT IS SO ORDERED August 13, 2025.



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:

TRIEU D. NGUYEN, d.b.a. TDN SMOG CHECK,

Automotive Repair Dealer Registration No. ARD 300872

Smog Check, Test Only, Station License No. TC 300872

and

TRIEU NGUYEN,

Smog Check Inspector License No. EO 642618

Respondent.

Agency Case No. 79/22-11142

OAH No. 2024110875

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on April 17 and June 16, 2025, via videoconference.

Deputy Attorney General Courtney S. Lui represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Attorney William D. Ferreira represented respondent Trieu D. Nguyen, who was present.

The matter was submitted on June 16, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 11, 2021, the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), issued Automotive Repair Dealer (ARD) Registration No. ARD 300872 to respondent Trieu D. Nguyen, doing business as TDN Smog Check.

2. On November 16, 2021, the Bureau issued Smog Check, Test Only, Station License No. TC 300872 to respondent. The registration and license were both in full force and effect at all relevant times and they are scheduled to expire on October 31, 2025.

3. On August 6, 2020, the Bureau issued Smog Check Inspector License No. EO 642618 to respondent. This license was in full force and effect at all relevant times and is scheduled to expire on February 28, 2026.

4. On July 18, 2023, 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 January

14, 2022, and January 12, 2023, he issued 13 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

5. Beginning in March 2015, smog check inspections of most vehicles in California are performed pursuant to the BAR-OIS protocol, which requires a functional computer test during the inspection. As part of a BAR-OIS inspection, the on-board diagnostic system of the vehicle being tested is connected to the station's inspection system by means of a cable and data acquisition device (DAD). The inspection system retrieves data from the vehicle's computer, which the system sends to the Bureau's vehicle information database.

6. Clean plugging is the illegal practice of using another vehicle's on-board diagnostic system, or another device, during the on-board diagnostic 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.

7. One method of detecting clean plugging is identifying whether the electronic vehicle identification number (eVIN), communication protocol, or parameter identification (PID) count electronically transmitted by the vehicle to the Bureau's vehicle information database 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.

8. Marc Ortega testified at hearing and wrote an investigative report, dated January 26, 2023. He has worked for the Bureau since 2005. Ortega has been a Program Representative III – Specialist for approximately three months. His duties include reviewing and analyzing smog check data, identifying anomalous data, and conducting investigations. Ortega has held active smog check repair and inspector licenses since 1986. He is also licensed as a safety technician (formerly known as a brake and lamp adjuster). He is certified as a master level technician and holds numerous certifications in automobile mechanic subspecialties. Prior to working for the Bureau, Ortega worked as an automotive repair technician, and smog check inspector for approximately 22 years.

9. Ortega 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 used to simulate the engine operation of a vehicle purportedly being tested and transmit data to the Bureau during a smog inspection, to falsely generate a "pass" result and issue a fraudulent certificate of compliance.

10. Ortega reports that to use a defeat device, a technician would typically have to enter the eVIN, odometer reading, make, model, and year of the vehicle purportedly tested. The defeat device would contain all of the other expected data for the specified vehicle, such as the appropriate communication protocol and PID count. The defeat device would transmit the data expected by the Bureau during the functional portion of the BAR-OIS inspection. If so, a fraudulent smog inspection might not be detectable via review of the eVIN, communication protocol, and PID count data transmitted.

11. However, the Bureau has devised another method to detect fraudulent smog inspections via the data transmitted. In his report, Ortega explained:

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.

12. At hearing, Ortega referred to this procedure as the Dynamic Idle Test and explained that it is not a standard part of a smog inspection, and has no bearing on whether a vehicle passes the inspection. The Dynamic Idle Test is randomly prompted at the conclusion of the onboard diagnostic test, and exists solely to confirm the integrity of the inspection.

13. Ortega further explained that, during a Dynamic Idle Test, inspection data is transmitted to the Bureau's vehicle information database, including:

- engine speed measured in RPM;
- 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).

14. Ortega 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. Opening the throttle increases the engine speed, with a corresponding increase in MAF and a decrease in MAP. Ortega opined that, if the data transmitted show that the engine speed is increased, but there is no change in throttle position, MAP, or MAF, then the data could not have come from a gasoline-powered engine. Ortega reported that these opinions are based on his experience as a technician and from reviewing smog check data. In addition, in December 2025, the Bureau performed a Dynamic Idle Test on five vehicles selected at random from its diagnostic lab. The results of those tests further supported his opinions.

15. Ortega reported that some defeat devices can simulate engine speed during a fraudulent OIS smog inspection. He is also aware that a defeat device can be used in conjunction with another device to simulate engine speed.

13 Instances of Clean Plugging by Respondent

16. Ortega reviewed the OIS data transmitted from respondent's station between January 2022 and January 2023. He also reviewed the Vehicle Inspection Report (VIR) and OIS Test Detail Report associated with each inspection.

17. Ortega identified 140 smog inspections with anomalous data suggesting fraudulent use of a defeat device. Ortega conducted a comprehensive review of 13 of these 140 inspections. The 13 inspections were of vehicles of a variety of makes, models, and years. He reports that in each of these 13 inspections, a certificate of compliance was issued by respondent after an inspection by respondent. In each of these 13 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 more than doubled), but no change in throttle position, MAP, or MAF. Complainant submitted documents setting forth the relevant data transmitted to the Bureau's vehicle information database during each of these purported smog inspections.

18. Ortega concluded that in each of these 13 inspections, the data received by the Bureau could not have come from the vehicle purportedly tested, or any gasoline-powered engine, and came instead from a defeat device.

19. Ortega opines that, if there were a problem with a vehicle's sensors that report the Dynamic Idle Test data, the vehicle would report a diagnostic trouble code or trigger the vehicle into "limp mode," which would illuminate the malfunction indicator lamp (MIL or "Check Engine" lamp) and also cause the vehicle to drive badly, if at all. Ortega verified that pursuant to the data transmitted, there were no diagnostic test codes reported and the MIL was not illuminated in any of the vehicles.

20. Ortega reports that he did not find other results of Dynamic Idle Tests for these 13 vehicles, likely because this test is not part of a standard smog inspection and was relatively new at the time of the inspections. There is no evidence that the vehicles purportedly tested had failed prior tests.

21. For each of the 13 vehicles, Ortega also reviewed two nationally recognized publications to confirm what data should be transmitted during a Dynamic Idle Test and the publications confirmed his expectations that the throttle position, MAP, and MAF data would change when the engine speed is increased, if the vehicle purportedly tested was actually connected to the OIS testing system.

The April 11, 2022, Inspection

22. Bureau representatives Michael Weaver and Christopher Montoya testified at hearing. On April 11, 2022, they had both been working for the Bureau for approximately three years. Both hold smog inspector licenses and both have decades of experience as smog inspectors and automotive repair technicians. Their testimony was credible in all respects.

23. On April 11, 2022, Weaver and Montoya attempted to conduct an inspection of respondent's smog check, test only, station. This inspection was prompted by the Bureau's receipt of data that did not match the data expected for vehicles purportedly being tested by respondent at his station. The Bureau representatives first parked nearby for approximately 20 to 30 minutes and observed the station's only entrance and exit. During this time the representatives observed live data showing that respondent was purportedly performing BAR 97 smog inspections on three vehicles, all model year 1999 or older. The BAR 97 testing system directly measures tailpipe emissions instead of using the vehicle's own computer and sensors. It is only authorized for use on vehicles of model-year 2000 or older. The representatives did not observe any vehicle enter or exit respondent's station during the time that he was purportedly performing these three inspections.

24. The representatives then drove to the front of the station, exited their vehicle, and approached the work area. They observed a silver BMW parked in front of the testing bay and an unidentified Asian male standing in front of a BAR 97 analyzer in front of the vehicle. Montoya reports that this vehicle was a post-2000 model year. Weaver observed a man he recognized as respondent sitting in the vehicle, with a laptop computer plugged into the vehicle. Weaver started asking respondent questions, including a request to inspect the laptop. Montoya reports seeing a cable

that was red and previously seeing a laptop defeat device with the same color cable. Respondent was uncooperative, gathered the laptop and cable(s), and walked away down the street. The representatives waited at the station. Approximately five minutes later, respondent returned, without the laptop. Weaver again asked respondent questions and asked to see the laptop. Respondent was again uncooperative. Weaver then approached the BAR 97 analyzer in an attempt to gather information from it. Respondent shoved Weaver out of the way, reached behind the machine, and turned off the power to it. Weaver reports that he was shocked by respondent's actions and called his supervisor, who instructed the representatives to leave, for their safety. These events were documented in an office conference report dated May 4, 2022.

Respondent's Evidence

25. Respondent is married and has two young children.

26. Respondent reports that he had "a little bit" of auto industry experience and some formal education before testing for the licenses at issue in this proceeding.

27. Respondent has operated his station since December 2021 and reports that he conducts approximately 10 to 15 inspections per day, six days per week.

28. Respondent denies ever being solicited to perform a fraudulent inspection, or ever charging a customer more to "pass a failing car." Respondent claims that he simply follows the OIS system procedure. He denies any knowledge of or ever using a defeat device. He denies ever performing an improper smog inspection. He denies ever letting anyone else use his license or testing facility, or sharing his smog check inspector password with anyone else. He claims that he would never jeopardize his license by using a defeat device.

29. When asked about the laptop at his shop during the April 11, 2022, inspection, respondent testified that he was trying to protect the laptop from Weaver and Montoya. Then he testified that he was using the laptop to check the history of the BMW on the Bureau's website to see if he was allowed to inspect it, or if it was required to go to a referee for inspection. Respondent testified that he did not mean to push Weaver, it was an accident, and after the representatives left, he called the Bureau's office and apologized.

Ultimate Findings

30. Ortega is a very qualified and experienced smog check technician and mechanic. His opinion that respondent performed 13 intentionally fraudulent inspections is primarily based on circumstantial evidence, but was persuasive. It was supported by the percipient testimony of Weaver and Montoya who observed respondent concealing and refusing to allow inspection of a laptop and cables connected to the BMW, and then using physical force to prevent the representatives from gathering the information from the BAR 97 testing machine in operation when they arrived. There is no plausible innocent explanation for this misconduct. Respondent's testimony that he has only performed proper smog inspections and never used a defeat device was not credible. The data respondent transmitted to the Bureau during these 13 smog inspections did not come from the vehicles purportedly tested, and instead came from one or more defeat devices. Accordingly, it is found that respondent committed 13 acts of clean plugging, using a defeat device. The data transmitted to the Bureau was not from the vehicles purportedly tested. Respondent made untrue and misleading statements. There was no bona fide error. These were acts of intentional fraud.

Costs

31. In connection with the investigation and enforcement of this accusation, complainant requests an award of costs in the total amount of \$22,434.25, comprised of \$3,682 in investigative costs, and \$18,752.25 for attorney and paralegal services provided by the Department of Justice and billed to the Bureau, including \$17,612.25 billed to the Bureau through April 14, 2025, and an estimated \$1,140 in additional fees for representation through the hearing. 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 respondents contend mitigation or rehabilitation, it is their 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)

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 13 vehicles had been properly inspected and by certifying that these vehicles were in compliance, respondent made untrue and misleading statements, which with the exercise of reasonable care he should have known were untrue, and those untrue statements were not the result of bona fide error. (Factual Finding 30.) Cause exists to discipline respondent's ARD registration under section 9884.7, subdivision (a)(1).

SECOND CAUSE FOR DISCIPLINE (FRAUD)

3. The Director may discipline the registration of an automotive repair dealer and/or the smog check, test only license of a licensee that commits an act that constitutes fraud. (§ 9884.7, subd. (a)(4), Health & Saf. Code, § 44072.2, subd. (d).) The evidence established that respondent's issuance of 13 false certificates of compliance was fraudulent. (Factual Finding 30.) Cause exists to discipline his ARD registration and smog check, test only license under section 9884.7, subdivision (a)(4), and Health and Safety Code section 44072.2, subdivision (d).

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

4. The Director may discipline the registration of an automotive repair dealer and/or the smog check, test only license of a licensee 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); Health & Saf. Code, § 44072.2, subds. (a), (c), (d), &

(h).) Respondent failed to comply with the Act in multiple respects, when he: engaged in unfair competition, which includes "any unlawful, unfair or fraudulent business act or practice" (§ 17200); failed to perform smog tests in accordance with Department procedures (Health & Saf. Code, § 44012; Code Regs., tit. 16, § 3340.45, subd. (a)); issued false smog certificates (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); issued smog certificates of compliance for vehicles that were not tested in accordance with Department procedures (Cal. Code Regs., tit. 16, § 3340.35, subd. (c)); failed to perform onboard diagnostic tests on vehicles he certified that he inspected (Cal. Code Regs., tit. 16, § 3340.42, subd. (a)(3)); and made false or misleading statements on a record (Code Regs., tit. 16, §§ 3371, 3373). (Factual Finding 30.) Cause exists to discipline his ARD registration and smog check, test only license under section 9884.7, subdivision (a)(6), and Health and Safety Code section 44072.2, subdivisions (a), (c), (d), and (h).

FOURTH CAUSE FOR DISCIPLINE (FRAUD)

5. Cause to discipline respondent's smog check inspector license exists under Health and Safety Code section 44072.2, subdivision (d), for fraud, based on Factual Finding 30.

FIFTH CAUSE FOR DISCIPLINE (VIOLATION OF STATUTES AND REGULATIONS)

6. The Director may discipline the smog check inspector license of a licensee who violates statutes and regulations. (Health & Saf. Code, § 44072.2, subds. (a), (c), (d) & (h).) Respondent violated applicable statutes and regulations when he: engaged in unfair competition (§ 17200); made untrue or misleading statements (§ 17500); failed to perform tests of emission control devices and systems in accordance with Department procedures (Health & Saf. Code, §§ 44012, 44032); issued false smog certificates (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); failed to perform

smog tests in accordance with statutes and Department procedures (Cal. Code Regs., tit. 16, §§ 3340.30, subd. (a), 3340.45, subd. (a)); entered information and data into the emission inspection system for a vehicle other than the one being tested (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)); did not perform onboard diagnostic tests on vehicles he certified that he smog checked (Cal. Code Regs., tit. 16, § 3340.42, subd. (a)(3)); and made false or misleading statements on a record (Cal. Code Regs., tit. 16, § 3373). (Factual Finding 30.) Cause exists to discipline his smog check inspector license under Health and Safety Code section 44072.2, subdivisions (a), (c), (d), and (h).

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 30, 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.

10. Respondent's 13 instances of clean plugging constitute a pattern or practice of intentional fraud in the performance of his duties as a licensee. Respondent refuses to admit this misconduct and his testimony at hearing lacked candor. He also acted unprofessionally during the April 11, 2022, inspection when he pushed a Bureau representative and obstructed their inspection. The evidence shows that respondent cannot be trusted to perform smog inspections in accordance with the Bureau's specifications and he is not a good candidate for probation. 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 \$22,434.25. (Factual Finding 31, Legal Conclusions 2–6.)

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

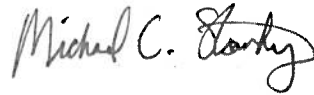
misconduct, but who has used the hearing process to obtain a dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when the Bureau has conducted a disproportionately large investigation 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 300872, issued to Trieu D. Nguyen doing business as TDN Smog Check, is revoked.
2. Any other automotive repair dealer registrations issued to respondent Trieu D. Nguyen are revoked.
3. Smog Check, Test Only, Station License No. TC 300872, issued to respondent Trieu D. Nguyen doing business as TDN Smog Check, is revoked.
4. Smog Check Inspector License No. EO 642618, issued to respondent Trieu Nguyen, is revoked.
5. Any other licenses issued to respondent Trieu D. Nguyen under chapter 5 of part 5 of division 26 of the Health and Safety Code are revoked.

6. Respondent Trieu D. Nguyen is ordered to pay the Bureau of Automotive Repair its costs of investigation and enforcement in the amount of \$22,434.25.

DATE: 07/07/2025

A handwritten signature in black ink, reading "Michael C. Starkey". The signature is written in a cursive, flowing style.

MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings