

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

In the Matter of the Accusation Against:

FREDDY DELGADO LUGO dba CULICHI SMOG CHECK

10557 ½ Magnolia Ave.

Riverside, CA 92505

Automotive Repair Dealer Registration No. ARD 301974

Smog Check Test Only Station License No. TC 301974

and

FREDDY DELGADO-LUGO

9841 Lombardy Ave.

Bloomington, CA 92316

Smog Check Inspector License No. EO 643273

Respondents.

Case No. 79/24-6272

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OAH No. 2025010765

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 December 23, 2025.

IT IS SO ORDERED November 17, 2025.

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

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PROPOSED DECISION

Michelle C. Hollimon, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 26 and August 27, 2025.

Michael M. Karimi, Deputy Attorney General, Office of the Attorney General, Department of Justice, represented complainant, Patrick Dorais, Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs, State of California.

Frank C. Brucculeri of Frank Brucculeri Law Corporation represented respondents Freddy Delgado Lugo, dba Culichi Smog Check and Freddy Delgado-Lugo. Mr. Delgado-Lugo was present throughout the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 27, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 21, 2021, the BAR issued Smog Check Inspector (EO) License Number EO 643273 to respondent Freddy Delgado-Lugo. The EO license was in full force and effect at all times relevant to the allegations in this matter and will expire on December 31, 2025, unless renewed.

2. On March 14, 2022, the BAR issued Automotive Repair Dealer (ARD) Registration Number ARD 301974 to respondent Freddy Delgado Lugo, dba Culichi Smog Check. The ARD registration was in full force and effect at all times relevant to the allegations in this matter and will expire on March 31, 2026, unless renewed.

3. On June 16, 2022, the BAR issued Smog Check, Test-Only, Station (TC) License Number TC 301974 to respondent Freddy Delgado Lugo, dba Culichi Smog Check. The TC license was in full force and effect at all times relevant to the allegations in this matter and will expire on March 31, 2026, unless renewed.

4. On September 5, 2024, complainant signed the accusation in this matter in his official capacity against respondents alleging eight total causes for discipline related to multiple alleged fraudulent smog checks that occurred between February 14, 2023, and March 22, 2023. The accusation alleged that the ARD registration and TC license issued to respondent Freddy Delgado Lugo, dba Culichi Smog Check should be disciplined for: (1) making untrue and/or misleading statements; (2) conduct constituting fraud; (3) failing to comply with the motor vehicle inspection program, (4) failing to comply with regulations pursuant to the motor vehicle inspection program; and (5) dishonesty, fraud or deceit. The accusation further alleged that the EO license issued to respondent Freddy Delgado-Lugo should be disciplined for: (1) violations of the motor vehicle inspection program; (2) failing to comply with regulations pursuant to the motor vehicle inspection program; and (3) dishonesty, fraud or deceit. Complainant seeks revocation or suspension of the ARD registration issued to Freddy Delgado Lugo, dba Culichi Smog Check, and any other ARD registration issued to Freddy Delgado-Lugo; revocation or suspension of the TC license issued to Freddy Delgado Lugo, dba Culichi Smog Check, and any other license issued to Freddy Delgado-Lugo under the Motor Vehicle Inspection Program; revocation or suspension of the EO license issued to Freddy Delgado-Lugo; and recovery of costs of investigation and enforcement in this matter.

5. Respondents¹ timely filed a notice of defense, and this hearing followed.

¹ All references to respondent(s) in this matter refer to Freddy Delgado Lugo, dba Culichi Smog Check, and Freddy Delgado-Lugo, collectively and/or individually.

Investigation and Testimony of Steve Koch

6. The following factual findings are derived from the testimony of Steve Koch, documents he compiled during his investigation, and the report he completed in connection with his investigation of respondents, all of which were admitted into evidence.

7. Mr. Koch is a Program Representative I with the BAR, where he has worked for over 25 years. Mr. Koch is an Automotive Service Excellence (ASE) certified master technician and has had his smog license since 1996. Prior to working at the BAR, he worked as a general mechanic for approximately 10 years.

8. Mr. Koch's job duties include working with both licensees and consumers in matters related to auto repair and smog checks. His primary duties are inspections and investigations, mainly related to smog checks. Mr. Koch has done smog check inspections for most of his career with the BAR. Mr. Koch took all necessary BAR investigation courses when he started at the BAR, and takes continuing courses to keep his licenses current. Mr. Koch estimated that he has done approximately 150 investigations and related reports in the last five years.

9. Mr. Koch is familiar with California's smog check program. California's smog check program is designed and intended to reduce air pollution by identifying and requiring the repair of polluting motor vehicles. Beginning March 9, 2015, the smog check program was updated to require use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all

Freddy Delgado Lugo was the owner of Culichi Smog Check at all times relevant to these proceedings.

areas of the state when inspecting most model-year 2000 and newer gasoline and hybrid vehicles. The BAR-OIS 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 retrieves diagnostic data from the vehicle. The DAD connects between the BAR-OIS computer and the vehicle's on-board computer. Data retrieved and recorded during a BAR-OIS smog check includes the electronic vehicle identification number (eVIN), the communication protocol, and the number of parameter identifications (PIDs).

10. On all 2005 and newer vehicles (and in some older vehicles), the eVIN is programmed into the on-board diagnostics system. This electronically programmed VIN is referred to as the "eVIN" and is captured by BAR-OIS during a smog check, and under normal circumstances matches the physical VIN on the vehicle.

11. The communication protocol is an electronic "language" that is used by the on-board computer to communicate to scan tools and other devices such as the BAR-OIS. The specific protocols used to access a vehicle's computer are programmed by the manufacturer and do not change.

12. PIDs are data points reported by the on-board computer to the BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other input and output values. The PID count is the number of data points reported by the vehicle's OBD II system and is programmed by the manufacturer.

13. The inspector also performs a visual and functional test on the vehicle. The BAR-OIS prints a Vehicle Inspection Report, which is the physical record of the test results and shows the certificate of compliance number that is issued to a passing

vehicle. The smog technician must sign the Vehicle Inspection Report to indicate the inspection was done within BAR guidelines.

14. The BAR-OIS transmits the data to the BAR's Vehicle Inspection Database (VID). The database contains information such as registration data, emissions control system data, smog check history, station and technician data, and certificate data. The BAR can access the database to view test data on smog inspections performed at a smog station or retrieve and print records for a particular smog inspection. The BAR can also access test records for a particular vehicle.

15. Mr. Koch testified that he is familiar with methods used to evade requirements of the smog check program, including clean plugging. Clean plugging is a method by which a source other than the vehicle subject to the inspection, occasionally another vehicle but most often a simulator device, is used to mimic the information the car would generally produce during a smog test for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance.

16. Mr. Koch testified that he has direct knowledge of the simulator devices. He has confiscated simulator devices in the past and has monitored stations using these devices. The devices themselves are approximately four inches by 10 inches in size, have circuit boards with switches and knobs, and are generally used with a program on a computer that interfaces with the simulator. The vehicle information will be programmed into the simulator, then plugged into the data device on the smog analyzer to mimic test results. Mr. Koch testified the simulator devices are expensive and not something an average consumer would purchase to pass a smog inspection. Mr. Koch admitted on cross-examination that he had not researched the cost and availability of these devices online "in years." He further testified that the simulator device size, and the number of knobs and switches on them, make them difficult to

hide in a vehicle. Mr. Koch testified he personally had never seen one installed in a vehicle and while he could not say that it was impossible to do so, it was highly improbable.

17. Mr. Koch testified that an in-person inspection of a smog station is not necessary to determine instances of clean plugging. The data that is collected during smog testing alone is enough to determine if a fraudulent test has been performed. Based on smog check data submitted to the BAR, an investigation of the smog check activities of Culichi Smog Check was initiated. Mr. Koch reviewed data submitted by Culichi Smog Check to the BAR, and wrote an investigation report summarizing his investigation findings.

18. Mr. Koch recalled meeting respondent once, which he believed was during a routine inspection at another station, El Gordito, where respondent previously worked.

19. Mr. Koch testified that he included examples of 10 specific vehicles in his investigation report, but that he reviewed the data from hundreds, if not more, vehicles inspected by respondent. The data reviewed showed there were vehicles inspected by respondent that were properly tested. The data reviewed also showed there were additional vehicles that were clean plugged by respondent. The 10 vehicles that were included in the report were just a sample for the report, and the number the BAR typically uses in investigation reports. Mr. Koch estimated the number of vehicles clean plugged as "over 100" and testified on cross examination that he "used 100 as it was far greater than the number in my report."

20. All smog certificates that were issued were purchased by Culichi Smog Check. Smog inspection stations purchase smog certificates in sequential blocks of 50

certificates. The smog station assigns a unique smog certificate to each passing test. The certificates associated with the 10 vehicles in Mr. Koch's investigation report were purchased by Culichi Smog Check between February 14, 2023, and March 15, 2023.

21. Mr. Koch testified that all 10 vehicles included in his report had the same issues with the data collected during their respective smog inspections – the reported PIDs did not match expected PIDs. During the smog inspection, the inspector is instructed to increase the vehicle's revolutions per minute (RPMs) from its initial idle RPM amount to over 2,000 RPMs. The RPMs data reported for the vehicles shows an increase in RPMs. With a change in RPMs, there should be corresponding changes with other measurements such as the intake manifold pressure, ignition timing and the air flow rate from the mass air flow sensor. There were no such changes in all 10 vehicles. Mr. Koch testified that this type of non-changing value is what is seen when a facility is trying to manipulate the OBD II system with a simulator and why he determined clean plugging had occurred with regard to these 10 vehicles.

22. Mr. Koch testified that while it is possible that one measurement could be incorrect due to a malfunction with that particular sensor, a check engine light should come on if that is the case. A check engine light not coming on in one instance with one vehicle could be possible, but multiple sensors putting out flat, non-changing data in multiple vehicles is unrealistic.

23. Mr. Koch testified that, of the 10 vehicles included in his investigation report, he found only one that had a prior failed smog inspection. His investigation report incorrectly stated the first inspection of this vehicle, a 2004 Toyota Corolla CE, was performed somewhere other than Culichi Smog Check. Both the initial test the vehicle failed, and the subsequent test, were performed by respondent. Mr. Koch testified that the PIDs from the failed inspection were what would be expected - when

there was a change in RPMs, there were changes in other measurements like ignition timing and air flow rate.

24. Mr. Koch concluded that clean plugging had occurred based on his experience and the data that was collected. Mr. Koch testified on cross-examination that no surveillance was done of Culichi Smog Check or the registered owners of the vehicles that were the subject of his investigation report. Mr. Koch did not interview the registered owners of the vehicles, do any visual inspections of the vehicles himself, or attempt to determine if the owners paid additional funds for fraudulent smog testing.

25. Mr. Koch testified on cross-examination that he has seen an OBD II freeze. He does not know the causes of freezes. Mr. Koch testified that he did not know if a "slower generic pathway" could be the cause of a flatline PIDS report or if automotive instructors were recommended limiting the number of PIDs to reduce freezing. Mr. Koch testified that the smog technician cannot limit the number of PIDs transmitted during a smog check. Mr. Koch is not aware of a single example of data corruption in any of the investigation reports he has written.

26. As a certified ASE mechanic, he knows that sensor inputs change as RPMs change. He has investigated other matters where simulator devices were used. There is no alternative explanation for the test results of the 10 vehicles. The BAR is positive that clean plugging occurred based on the data alone.

Respondent's Testimony

27. The following factual findings are derived from the testimony of respondent and documents admitted into evidence.

28. Respondent is 32 years old. He graduated high school in 2012 and completed some community college coursework. Respondent went to school to become a smog technician in 2020. He worked at El Gordito as a smog technician before opening Culichi Smog Check.

29. Respondent was asked on cross-examination when he opened Culichi Smog Check. He initially testified that he opened Culichi Smog Check the end of 2021, then testified he made a mistake and that based on the date of the licenses that were issued to him and Culichi Smog Check, he opened Culichi Smog Check in 2022. Respondent then stated that he could not recall when he started and that "if that is what the documents say, that is most likely right," referring to the TC license issued to Culichi Smog Check on June 16, 2022.

30. Respondent got his smog check inspector license in September 2021. Respondent testified on cross-examination that he was the only smog check inspector at El Gordito while he was employed there and was there for a few months. Respondent testified that he performed approximately 100 to 200 smog inspections while working at El Gordito.

31. Respondent also testified on cross-examination that he stopped working at El Gordito approximately one month before he opened Culichi Smog Check. Respondent testified that when he referred to opening Culichi Smog Check, he was referring to when he obtained his TC license. Respondent then testified that he obtained his ARD license a few months before his TC license, stopped working for El Gordito approximately one month before he got his ARD license, and there was a few months between the end date of his employment at El Gordito and opening Culichi Smog Check where he was not performing smog checks. Respondent testified that smog checks could not have been performed at El Gordito with his smog inspector

license as he had his identification with him, and that identification had to be scanned to perform a smog check.

32. Respondent testified that he provides customers a written estimate for a smog check, as well as a receipt once the smog check has been completed. Respondent testified that no one else at Culichi Smog Check could have performed the smog inspections under his license.

33. Respondent provided the invoices for the 10 vehicles that were the subject of Mr. Koch's investigation report, all of which were admitted into evidence. Respondent testified the amount indicated on the invoice is the total amount paid by each of the customers, and he was not paid anything in addition to the amount indicated on the invoice. Respondent testified on cross-examination that he did not remember and was not friends with any of the 10 customers that brought in the vehicles that were the subject of Mr. Koch's investigation report.

34. Respondent testified that he has never intentionally cheated on a smog test, has never used a simulator device for the purpose of cheating on a smog test, has never owned a simulator device, and did not use a simulator device for the 10 vehicles that are the subject of Mr. Koch's investigation report. When asked if he had any explanation as to the PID data results reported by Mr. Koch, respondent stated "I don't even know what PID means or anything. My job is just to inspect the vehicles."

35. Respondent testified that he cannot look under a vehicle's dashboard to see if they are using a device to alter smog test results. Respondent testified that when performing the visual inspection for the smog inspection, he "is not supposed to open anything" and therefore does not open the hood of the vehicle, does not look underneath the vehicle, and does not inspect the vehicle's computer.

Smog Inspections by Respondent at El Gordito

36. Mr. Koch was recalled as a witness and provided the following testimony regarding smog inspections by respondent at El Gordito: Mr. Koch reviewed BAR data regarding inspections performed by respondent as a smog check inspector at El Gordito. The data reviewed showed respondent's first inspection at El Gordito occurred on September 13, 2021, and the last inspection was on June 11, 2022. During that time period, respondent performed 2,980 smog inspections.

Cost Recovery

37. Complainant seeks costs related to investigation in this matter in the amount of \$3,347.90. In support of these costs, the BAR produced two declarations. The first declaration was a one-page declaration signed by Steve Koch on May 14, 2024, to which there was attached a three page "Case Hours and Costs Spreadsheet" that listed the time he spent between April 8, 2024, and May 14, 2024, performing "Review – Codes/Files/Documents/Records" (16 hours) and "Report Writing" (11 hours). The total time he spent was 27 hours and at the hourly rate of \$101.98, amounted to \$2,753.46. The second declaration was a one-page declaration signed by Raymond Gottenbos, Program Representative II, on May 15, 2024, to which there was attached a three page "Case Hours and Costs Spreadsheet" that listed the time he spent on May 14, 2024, and May 15, 2024, performing "Case Review" (5.5 hours) on this matter. The total time he spent was 5.5 hours and at the hourly rate of \$108.08, amounted to \$594.44. The evidence of investigative costs complied with California Code of Regulations, title 1, section 1042, subdivision (b)(2), and the \$3,347.90 in costs requested were reasonable.

38. Complainant also seeks costs related to the enforcement of this matter in the amount of \$8,091 for costs incurred by the Attorney General's Office. A declaration certifying the total costs was signed by Deputy Attorney General Michael M. Karimi, who prosecuted this disciplinary action. A billing summary was attached to his declaration that described the legal services provided, the dates legal services were performed, who provided the services, the amount of work that was performed on specific dates, and the professionals' hourly rates. The declaration provided a detailed summary for the costs of prosecution by the Department of Justice and incurred by the board through August 19, 2025. The certification and attached documents for the costs incurred satisfy the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(1) with respect to costs incurred through August 19, 2025, in the amount of \$8,091. These costs are reasonable in both the nature and extent of the work performed.

39. Accordingly the total costs of investigation and enforcement of this matter is \$11,438.90, which is reasonable.

40. Respondent testified that Culichi Smog Check is his only source of income, and that he also financially supports his mom, who does not work and lives with him.

LEGAL CONCLUSIONS

Public Protection

1. "Protection of the public shall be the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be

promoted, the protection of the public shall be paramount.” (Business and Professions Code section 9880.3.) Administrative proceedings to revoke, suspend, or impose discipline on a licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but to protect the public. (*Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

2. Air pollutants from automobiles are “the primary cause of air pollution” in many areas of California, and the control and elimination of air pollutants is necessary to protect public health. (Health and Safety Code section 43000, subdivisions (a), (b).) California’s Motor Vehicle Inspection Program was enacted to ensure that California meets or exceeds emission reduction targets. (Health & Saf. Code, § 44000, et seq.)

Burden and Standard of Proof

3. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582.)

4. The standard of proof in proceedings to discipline automotive repair dealers, smog check stations, and/or smog check technicians is preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.)

5. Preponderance of the evidence means that the evidence on one side outweighs the evidence on the other side, “not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.) If the evidence is so evenly balanced that one side

does not outweigh the other side, the party who had the burden of proof has failed to meet the burden. (*People v. Mabini* (2001) 92 Cal. App. 4th 654, 663.)

Applicable Statutory Authority

6. Business and Professions Code section 9884.7 provides:

(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 that constitutes fraud.

[¶] . . . [¶]

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

[¶] . . . [¶]

(c) Notwithstanding subdivision (b), the 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 this chapter, or regulations adopted pursuant to it.

7. Health and Safety Code section 44012 requires smog check station tests to “be performed in accordance with procedures prescribed by the department.”

8. Health and Safety Code section 44015, subdivision (b), provides “[i]f a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.”

9. Health and Safety Code section 44072.2 provides:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter 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. . . .

10. Health and Safety Code section 44072.10, subdivision (c), states:

The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, clean plugging, clean glassing, clean tanking, or any other fraudulent inspection practice, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.

11. Health and Safety Code section 44072.8 provides:

When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

The chapter referenced in Health and Safety Code section 44072.8 is Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, the Motor Vehicle Inspection Program.

Applicable Regulatory Authority

12. California Code of Regulations title 16, section 3340.24, subdivision (c), provided the bureau authority to "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."

13. California Code of Regulations title 16, section 3340.30, subdivision (a) requires licensed smog check inspectors and repair technicians to "inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article."

14. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides in part:

(c) A licensed 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 and has all the required emission control equipment and devices installed and functioning correctly. . . .

15. California Code of Regulation, title 16, section 3340.41, subdivision (c), provides:

(c) No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one being tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information about the vehicle being tested.

16. California Code of Regulations, title 16, section 3340.42, states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

[¶] . . . [¶]

(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and

newer. The OBD test failure criteria are specified in section 3340.42.2.

(b) In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

(1) A visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed.

(2) A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation.

(c) The bureau may require any combination of the inspection methods in sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and Safety Code section 44014.7 as a means of identifying potential operational problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables described in subsection (a), as applicable.

(2) Vehicles with emission levels exceeding the emission standards for gross polluters during an initial inspection will be considered gross polluters and the provisions pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

Applicable Case Law Regarding Fraud

17. Administrative disciplinary matters are akin to civil proceedings. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) A cause of action for fraud requires the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 127.)

18. All the elements must be present for fraud to be found. There is no absolute or fixed rule for determining what facts will constitute fraud; whether it is found depends upon the particular facts of the case under inquiry. Fraud may be proved by direct evidence, or it may be inferred from all of the circumstances in the case. (*Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674-675.) In an action regarding a private investigator's license, the Court of Appeal held:

Fraud embraces multifarious means whereby one person gains an advantage over another and means in effect bad faith, dishonesty or overreaching It is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling and unfair ways by which another is cheated.

(*Wayne v. Bureau of Private Investigators and Adjusters, Department of Professional and Vocational Standards* (1962) 201 Cal.App.2d 427, 437-438.)

Cause Exists to Impose Discipline

19. A preponderance of the evidence established that the 10 incidents of clean plugging that were the subject of the accusation in this matter occurred at Culichi Smog Check and were performed by respondent Delgado-Lugo. Respondent's registration and licenses are subject to discipline for making untrue and misleading statements certifying the vehicles had passed smog inspections when they had not been properly inspected; issuing smog certificates of compliance without performing bona fide inspections; entering false information in the emissions inspection system; committing dishonest, fraudulent, and deceitful acts by issuing smog certificates without performing bona fide inspections; failing to perform emission control tests in accordance with the required procedures; and signing smog certificates of compliance under penalty of perjury, thereby falsely certifying that proper smog inspections had been performed.

20. A preponderance of the evidence established that the 10 vehicles issued certificates of compliance that are the subject of the accusation in this matter did not have the expected communication protocol or PID counts that would be expected for the type of vehicle tested. Although a fraudulent smog check was not observed, the unexpected OIS test data is sufficient to sustain the cause for discipline with respect to those vehicles.

21. As such, cause exists to discipline Mr. Delgado-Lugo's ARD registration, TC license, and EO license pursuant to Business and Professions Code sections 9884.7, subdivisions (a)(1) (untrue or misleading statements) and (a)(4) (fraud), Health and Safety Code section 44072.2, subdivisions (a) (failure to comply with the Motor Vehicle Inspection Program) and (d) (dishonesty, fraud or deceit), in conjunction with Health and Safety Code section 44072.10, subdivision (c), and Health and Safety Code

44072.2, subdivision (c) (failure to comply with the regulations pursuant to the Motor Vehicle Inspection Program).

Evaluation

22. California Code of Regulations, title 16, section 3395.4, provides that in reaching a decision on a disciplinary action, the BAR must consider the disciplinary guidelines entitled "Guidelines for Disciplinary Orders and Terms of Probation" [Rev. June 2021]. These guidelines provide the recommended sanctions for various violations. The recommended discipline for issuing fraudulent inspections (Health and Safety Code section 44072.10, subdivision (c)) is revocation. Factors in aggravation and mitigation may be considered when fashioning the appropriate measure of discipline.

23. Business and Professions Code section 9884.7, subdivision (c), provides that the registration for all places of business can be disciplined if the ARD license holder has engaged in "repeated and willful violations" of statutes and regulations. Health and Safety Code section 44072.8 provide that when a registration or license has been revoked following a hearing, any additional license issued under the Automotive Repair Act and Motor Vehicle Inspection Program in the name of the licensee may be likewise revoked or suspended by the department's director. Revocation of the additional licenses and registrations is not mandatory.

24. Respondent did not admit to engaging in clean plugging. Respondent testified that he never intentionally cheated a smog test and does not own and did not use a simulator device to produce passing results for the 10 vehicles at issue. Respondent's testimony is not credible. The data provided to the BAR from the vehicles at issue and analyzed by Mr. Koch demonstrated similar, unexpected test data in each instance. Mr. Koch credibly testified that the non-changing data values that

were seen with all 10 vehicles are what is seen when a simulator device is used. While respondent's counsel asked questions of Mr. Koch regarding the possibility of simulator devices being purchased and hidden by vehicle owners, and malfunctions with equipment causing errors with test data, among other things, Mr. Koch credibly testified that such explanations were highly unlikely, and there was no alternate explanation to explain the test results for the 10 vehicles at issue, other than clean plugging.

25. Respondent offered no plausible explanation for the test results provided to the BAR. Respondent claimed not to understand the data results testified to by Mr. Koch. Respondent had difficulty even recalling when he opened Culichi Smog Check. Additionally, Mr. Koch testified that there were "far greater" than the 10 vehicles included in his report that showed clean plugging by respondent. Respondent's testimony regarding smog inspections performed at El Gordito further calls into question his credibility and truthfulness in this matter. Respondent claimed to have worked at El Gordito for a few months and performed 100 to 200 smog inspections while working there. Mr. Koch testified that information submitted to the BAR showed that respondent worked at El Gordito for almost nine months and performed almost 2,980 smog inspections in that time.

26. In mitigation, there is no prior disciplinary history against respondent. However, respondent has held his smog inspector license for only approximately three years, and has only been in business since 2022. The present accusation was filed in 2024.

27. It is concerning that respondent did not admit to any wrongdoing. Respondent did not provide sufficient evidence of rehabilitation. Respondent engaged in multiple acts of dishonest, fraudulent behavior. As such, the guidelines

recommended discipline of revocation of respondent's registration and licenses are required for public protection.

Recovery of Costs

28. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate 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." "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." (Business and Professions Code section 125.3, subd. (c).)

29. Under California Code of Regulations, title 1, section 1042, subsection (b), a cost request must be accompanied by a declaration or certification of costs. For services provided by persons who are not agency employees, the declaration must be executed by the person providing the service and describe the general tasks performed, the time spent on each task, and the hourly rate. In lieu of the declaration, the agency may attach copies of the time and billing records submitted by the service provider.

30. The California Supreme Court, in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, held that a regulation imposing costs for investigation and enforcement under Business and Professions Code section 317.5, which is similar to section 125.3, did not violate due process. However, it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost

awards in a manner such that costs imposed did not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing.” (*Ibid.*)

31. *Zuckerman* sets forth five factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a “subjective” good faith belief in the merits of his or her position; whether the licensee raised a “colorable challenge” to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra*, at p. 45.)

32. Applying the *Zuckerman* criteria, leads to the following conclusions: (1) respondent was not successful in getting some of the charges dismissed or reduced; (2) respondent asserted a good faith belief in his position, denying any clean plugging whatsoever; (3) respondent did not present a colorable challenge to revocation; (4) respondent’s financial ability to make payments is limited based on his testimony and his inability to work as a smog inspector with the revocation of his license; and (5) the scope of the investigation was appropriate in light of the alleged misconduct.

33. Respondent Freddy Delgado-Lugo shall be responsible to pay costs to the bureau in the amount of \$11,438.90. However, the payment of costs shall be stayed until such time respondent seeks to reinstate his licenses or obtain another license or registration from the BAR. At that time, as a condition precedent to issuance of any license or registration, respondent shall pay the costs in full.

ORDER

1. Smog Check Inspector License Number EO 643273 issued to respondent Freddy Delgado-Lugo is revoked.

2. Automotive Repair Dealer Registration Number ARD 301974 issued to respondent Freddy Delgado Lugo dba Culichi Smog Check is revoked.

3. Smog Check, Test-Only, Station License Number TC 301974 to respondent Freddy Delgado Lugo dba Culichi Smog Check is revoked.

4. The ARD registration for all places of business operated in California by respondent Freddy Delgado-Lugo, individually and/or under any fictitious business name, including Culichi Smog Check, is revoked.

5. Any additional license issued to respondent Freddy Delgado-Lugo, individually and/or under any fictitious business name, including as Culichi Smog Check, under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, the Motor Vehicle Inspection Program, is revoked.

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6. Respondent Freddy Delgado-Lugo is ordered to pay costs in the amount of \$11,438.90. The payment of costs shall be stayed until such time respondent seeks to reinstate his licenses or obtain another license or registration from the BAR. At that time, as a condition precedent to issuance of any license or registration, respondent shall pay the costs in full.

DATE: September 24, 2025

M. C. Hollimon

M. C. Hollimon (Sep 24, 2025 16:42:57 PDT)

MICHELLE CARLISLE HOLLIMON

Administrative Law Judge

Office of Administrative Hearings