

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

In the Matter of the Accusation Against:

COSME ANTONIO HERNANDEZ dba HERNANDEZ SMOG

8602 Long Beach Blvd.

South Gate, CA 90280

Automotive Repair Dealer Registration No. ARD 302850

Smog Check Test Only Station License No. TC 302850

and

DAVID GUTIERREZ

6630 Corona Ave.

Bell, CA 90201

Smog Check Inspector License No. EO 643478

Respondents.

Case No. 79/23-18907

///

///

OAH No. 2025050887

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 24, 2025.

IT IS SO ORDERED November 17, 2025.

Signed copy on file
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:

COSME ANTONIO HERNANDEZ DBA HERNANDEZ SMOG,

Automotive Repair Dealer Registration No. ARD 302850

Smog Check, Test Only, Station License No. TC 302850,

and

DAVID GUTIERREZ,

Smog Check Inspector License No. EO 643478,

Respondents.

Agency Case No. 79/23-18907

OAH No. 2025050887

PROPOSED DECISION

Taylor Steinbacher, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on September 17–18, 2025.

M. Travis Peery, Deputy Attorney General, represented complainant Patrick Dorais, the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Marvin E. Vallejo, Esq., represented respondent Cosme Antonio Hernandez doing business as Hernandez Smog (respondent Hernandez) and respondent David Gutierrez (respondent Gutierrez), both of whom were present during the hearing.

Oral and documentary evidence was received. The parties discussed on the record the possibility that respondents' counsel's representation of both respondents in this matter presented a conflict of interest. Complainant's counsel took no position on the issue. Based on respondents' counsel's representation that he had obtained a conflict waiver from his clients, the ALJ left the record open until September 22, 2025, for counsel to submit a copy of that waiver to OAH. No conflict waiver was received by that deadline. The record was closed, and the matter was submitted for decision on September 22, 2025.

SUMMARY

The Bureau conducted two undercover operations of Hernandez Smog in which respondent Gutierrez passed a vehicle during a smog inspection that should not have been passed. In the second undercover operation, respondent Gutierrez requested and received \$200 from an undercover agent to pass the vehicle. Respondent Hernandez owned and operated the smog inspection station at issue and may also be disciplined for respondent Gutierrez's fraud. Accordingly, the licenses and registrations issued to respondents are revoked.

//

FACTUAL FINDINGS

Background and Procedural History

1. On June 27, 2022, the Bureau issued Automotive Repair Dealer Registration (ARD) Number ARD 302850 to respondent Cosme Antonio Hernandez dba Hernandez Smog. That ARD registration was in full force and effect at all times relevant here. (Ex. 3.)
2. On September 28, 2022, the Bureau issued Smog Check Test Only Station (SCTOS) License Number TC 302850 to respondent Hernandez. That SCTOS License was in full force and effect at all times relevant here. (Ex. 3.)
3. On January 13, 2022, the Bureau issued Smog Check Inspector (SCI) License Number EO 643478 to respondent Gutierrez. The SCI License was in full force and effect at all times relevant here. (Ex. 4.)
4. On January 7, 2025, complainant filed an Accusation against respondents seeking to revoke or suspend their various licenses and registrations, and requesting an order directing them to pay the Bureau's costs of investigation and enforcement of this case. (Ex. 1, pp. A14–A27.)
5. Respondents each timely filed a Notice of Defense. (Ex. 1, pp. A6–A9.)

Complainant's Evidence

ALLEGATIONS IN THE ACCUSATION

6. During the hearing respondents stipulated to the truth of the factual allegations in the Accusation, which are below:

Undercover Operation #1

25. On or about November 2, 2023, a Bureau undercover operator (operator) took the Bureau's 2006 Toyota (2006 Toyota) to Hernandez Smog and requested a smog check inspection. At that time, the Bureau had modified the 2006 Toyota by removing the original catalytic converters and installing non-approved/aftermarket catalytic converters not legal for use in California along with tamper indicators to detect their removal. This modification caused the 2006 Toyota to fail the visual portion of a properly performed Smog Check inspection—for a tampered catalyst—that was performed on the modified vehicle in the Bureau's lab.

26. After arriving at Hernandez Smog on November 2, 2023, the operator met Respondent Gutierrez who performed a Smog Check inspection on the 2006 Toyota. The operator could see the inspection being performed from where he was seated and observed that while Respondent Gutierrez connected the OBD Data Acquisition Device to inside the vehicle, he did not look under the vehicle to inspect the catalyst and did not open the hood to inspect the under-hood components. Following the inspection, Respondent Gutierrez told the operator that "it passed," charged the operator \$60.00 for the inspection, and provided the operator with a Vehicle Inspection report and passing certificate number. The operator then paid Respondent

Gutierrez \$60.00 in cash and left the location. The Vehicle Inspection Report for the passing inspection of the 2006 Toyota indicates that Respondent Gutierrez selected "Pass" for the inspection category titled "Catalyst," indicating he had visually inspected the catalytic converters.

27. On or about December 1, 2023, the Bureau re-inspected the 2006 Toyota and confirmed that it was still not in a condition to pass a properly performed California Smog Check inspection, as it again failed the visual portion of the Smog Check inspection due to the installed non-approved catalytic converters. Additionally, the re-inspection revealed that the tamper indicator previously installed by the Bureau remained in place indicating that the non-approved catalytic converters were never removed or disturbed.

Undercover Operation #2

28. On or about February 22, 2024, the operator took the Bureau's 2007 Dodge (2007 Dodge) to Hernandez Smog and requested a smog check inspection. At that time, the Bureau had modified the 2007 Dodge by removing both three-way catalytic converters, installing nonapproved spacers between each downstream heated oxygen sensor, and adding non-approved exhaust pipes. The Bureau had also installed a non-approved open element air filter with a nonapproved homemade air duct and installed a new crankcase ventilation hose with a non-approved add-on

breather filter. The Bureau had installed tamper indicators to detect removal of the nonapproved exhaust pipes, air duct, crankcase ventilation hose, and breather filter. The Bureau had also relocated the inlet air temperature (IAT) sensor such that it was no longer installed in accordance with the vehicle manufacturer's original configuration. The modifications made by the Bureau are commonly found on vehicles used for street racing, and they caused the 2007 Dodge to fail the visual portion of a properly performed Smog Check inspection that was performed on the modified vehicle in the Bureau's lab.

29. After the operator arrived at Hernandez Smog on February 22, 2024, he informed Respondent Gutierrez that he needed a smog inspection on the 2007 Dodge. After beginning the smog inspection, Respondent Gutierrez opened the hood of the 2007 Dodge, pointed to the air intake setup, and said to the operator that everything was fine. Respondent Gutierrez then entered the vehicle information into the test analyzer which informed him that the 2007 Dodge had been previously tested and failed for tampered emission components. The operator asked Respondent Gutierrez what was tampered on the vehicle, and Respondent Gutierrez pointed to the air intake pipe. The operator then told Respondent Gutierrez to "hook it up" and Respondent Gutierrez stated that he normally gets at least "\$200.00 to pass a vehicle like this." The operator

then offered \$200.00 in cash to Respondent Gutierrez if he would pass the vehicle. Respondent Gutierrez took the money and provided the operator with a passing Vehicle Inspection Report for the 2007 Dodge which indicated that Respondent Gutierrez had selected "Pass" indicating he had visually inspected the catalytic converters and "Pass" for the crankcase emissions controls when the positive crankcase ventilation system and air intake were in a tampered state.

30. On or about February 27, 2024, the Bureau re-inspected the 2007 Dodge and confirmed that it was still not in a condition to pass a properly performed California Smog Check inspection, as it again failed the visual portion of the Smog Check inspection due to both missing three-way catalytic converters, both non-approved add-on spacers, the non-approved open element air filter, the non-approved air duct, the non-approved add-on breather filter, and the relocated IAT sensor. Additionally, the re-inspection revealed that the tamper indicators previously installed by the Bureau remained in place indicating that the non-approved exhaust pipes, non-approved air duct, crankcase ventilation hose, and non-approved add-on breather filter were never removed or disturbed while out of Bureau custody.

//

//

CALIFORNIA'S SMOG CHECK PROGRAM

7. As of 2015, California law requires a smog check inspector conducting a smog test inspection on most vehicles built after 1999 to retrieve information from the tested vehicle's On-Board Diagnostic Inspection System (OIS). During the smog test, the vehicle's onboard computer sends data to the test station's computer, which then transmits the data via the internet to the Bureau's database, known as the Vehicle Information Database (VID). A smog test inspection also involves a visual inspection to ensure the vehicle's emission control devices are present, properly connected, and functional. If aftermarket parts have been installed on a vehicle, the inspector must verify whether those parts affect the vehicle's emission components. If so, the technician must identify the part and determine whether that part has an Executive Order (EO) number (either on a sticker or engraved on the part) showing the part has been approved by the California Air Resources Board. The technician manually inputs the results of this visual inspection as part of the smog test. (Exs. 5, 16.)

8. A licensed smog check technician or inspector is the only person authorized by the Bureau to perform smog tests. The technician or inspector is issued a personal access code and license number, which the technician or inspector enters to access the test station's computer to use the OIS to perform smog tests. After the smog test, the technician generates a Vehicle Inspection Report (VIR) stating whether the vehicle has passed or failed the inspection and the reasons for the failed inspection, if any. A paper copy of the VIR is generated for the owner, and a digital copy is transmitted electronically to the Bureau.

//

//

TESTIMONY

9. Mario Salas is an Automotive Program Representative for the Bureau who, among other things, conducts investigations for the Bureau. On March 30, 2025, the Bureau received a consumer complaint about a smog check station on Firestone Boulevard in South Gate, in which a smog technician offered to pass a consumer's failing vehicle for \$300.00. Salas assigned another Bureau employee, Luis Araya, to conduct an undercover investigation of that smog check station on November 2, 2023, using a 2006 Toyota Tacoma. The 2006 Toyota Tacoma had been modified before the undercover operation as described above. This modification would be obvious to a smog test technician if he or she looked under the vehicle. (Exs. 7–11.)

10. When Araya arrived at the smog test location that was the subject of the consumer complaint, the station employee said he was about to leave, but referred Araya to their "sister store," Hernandez Smog. Araya then went to Hernandez Smog for a smog inspection. Araya observed respondent Gutierrez perform a smog inspection of the 2006 Toyota Tacoma. (See Ex. 13.) The undercover investigation proceeded as described in Factual Finding 6. Gutierrez told Araya that the vehicle "passed" and provided him with a VIR in which the vehicle passed all visual inspections. (Ex. 14, p. A98.) The OIS Test Details for the 2006 Toyota Tacoma that were electronically transmitted to the Bureau show that Gutierrez conducted the inspection, and the inspection was conducted under Hernandez Smog's SCTOS license number. (Ex. 15.)

11. In 2024, Salas again assigned Araya to conduct an undercover investigation of Hernandez Smog, this time using a 2007 Dodge Charger. Salas requested that the Bureau make modifications to the emissions system of the 2007 Dodge Charger as described in Factual Finding 6. These modifications made it even more obvious that the vehicle should not pass a smog inspection. (Exs. 17–20.)

12. Araya conducted the second undercover investigation of Hernandez Smog on November 22, 2024. On that date, the undercover investigation proceeded as described in Factual Finding 6. Despite the 2007 Dodge Charger having several non-approved emissions components and modifications to the emissions system, respondent Gutierrez passed the vehicle after Araya provided him \$200 cash. Gutierrez provided Araya with a VIR for the 2007 Dodge Charger, in which the vehicle passed all visual inspections. (Ex. 21.) The OIS Test Details for the 2007 Dodge Charger that were electronically transmitted to the Bureau show that Gutierrez conducted the inspection under Hernandez Smog's SCTOS license number. (Ex. 22.)

COSTS

13. Complainant requests that respondents be ordered to reimburse the Board for the reasonable costs of investigation and enforcement of this matter. In support of this request, complainant submitted: (1) a Certification of Prosecution Costs: Declaration of M. Travis Peery, with an attached billing summary, which states that the Attorney General's Office billed the Board \$7,626.75 in legal fees and costs in this matter (AG Certification); and (2) a Certification of Investigation Costs and a log specifying 58.25 hours of investigation costs totaling \$6,295.66 (Investigation Certification). (Exs. 29–30.) The total of these amounts is \$13,922.41.

Respondents' Evidence

14. Gutierrez initially testified that, aside from the 2007 Dodge Charger, he had only ever taken money to pass a vehicle that should not have been passed on one other occasion. Later in his testimony, however, Gutierrez admitted he had been untruthful in his earlier testimony and he had, in fact, taken money to pass a non-passing vehicle five to six times and had made about \$1,000 doing so. Gutierrez also

asserted that he was not an employee of Hernandez Smog, but had an amorphous cooperation agreement with Hernandez. Under this agreement, Gutierrez would lend his STAR certification to the shop and would bring in his own clients' vehicles to be inspected. Hernandez, however, was supposed to receive money for inspections of vehicles Gutierrez did not bring in through his own client contacts. Hernandez paid the rent for the shop and for the equipment, while Gutierrez would pay the costs of his own certifications.

15. According to Gutierrez, Hernandez told him to abide by all the Bureau's rules and regulations regarding smog inspections. Despite this, Gutierrez admitted he engaged in fraud of which respondent Hernandez was unaware. Gutierrez feels ashamed for engaging in this fraud and feels like he has let down his family. He also acknowledged he had broken his word to respondent Hernandez and attributed a portion of his misconduct to being a young man.

16. Hernandez testified he considered Gutierrez to "technically" be an employee of the shop, but did not treat him like an employee. For example, Hernandez never requested or received a W-9 form or W-2 form from Gutierrez, and did not pay Gutierrez a regular wage. Hernandez relied on Gutierrez's representation that smog inspections would be performed honestly and correctly—he did not supervise any aspect of Gutierrez's inspections. Instead, Hernandez focused on trying to drum up business by handing out his business card at various gas stations. Hernandez denied ever receiving payment to pass a vehicle that should have passed an inspection.

//

//

//

LEGAL CONCLUSIONS

Applicable Law

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." (Bus. & Prof. Code, § 9880.3.) (All undesignated references are to the Business and Profession Code.)

Respondent Hernandez Can Be Held Responsible for Respondent Gutierrez's Unlawful Conduct

2. Where a licensee elects to operate a business through employees, he must be responsible to the licensing authority for the conduct of those employees in the exercise of the license. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295 [quoting *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360].) This rule applies whether the licensee uses employees or independent contractors to conduct the business. (*Rob-Mac, Inc v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797 [quoting *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165].)

3. Statutes governing the licensing and conduct of smog check businesses also provide that a licensed auto repair dealer may be liable for the "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" (§ 9884.7, subd. (a).)

//

4. Thus, regardless of the specific employment relationship between the respondents, Hernandez, as the owner of Hernandez Smog and the licensee, can be held responsible for Gutierrez's improper and fraudulent vehicle inspections. To hold otherwise would allow licensees to avoid responsibility for the unlawful conduct of their employees or contractors simply by pleading ignorance about the activities those parties conduct under the auspices of the license.

Standard and Burden of Proof

5. Complainant has the burden of proving by a preponderance of the evidence that public protection requires discipline of respondents' various licenses and registrations. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917; see also *Owens v. Sands* (1992) 176 Cal.App.4th 985.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE – UNTRUE OR MISLEADING STATEMENTS

6. As the first cause for discipline, complainant asserts that respondent Hernandez's ARD registration is subject to disciplinary action under section 9884.7, subdivision (a)(1). Section 9884.7 authorizes the Director of the Consumer Affairs (Director) to suspend, revoke, or place on probation the registration of an automotive repair dealer for making untrue or misleading statements. (§ 9884.7, subd. (a)(1).)

7. Health and Safety Code section 44012 requires that tests at smog check stations shall be performed in accordance with procedures set forth by the

Department. (Health & Saf. Code, § 44012.) This includes a visual or functional inspection of certain emission control devices of the vehicle. (*Id.*, § 44012, subd. (f); see also Ex. 16 [excerpt from Bureau's Smog Check Manual setting forth testing visual inspection procedures].)

8. Complainant proved this cause for discipline by a preponderance of the evidence. While working at Hernandez's shop and under Hernandez's ARD registration and SCTOS license, Gutierrez issued electronic smog certificates of compliance for the 2006 Toyota Tacoma and the 2007 Dodge Charger, certifying that those vehicles complied with applicable vehicle emissions rules when in fact neither vehicle had been properly inspected. Respondent Hernandez may be held responsible for this misconduct, as discussed above.

SECOND CAUSE FOR DISCIPLINE – FRAUD

9. As the second cause for discipline, complainant asserts respondent Hernandez's ARD registration is subject to disciplinary action under section 9884.7, subdivision (a)(4). That subdivision authorizes the Director to discipline the registration of an automotive repair dealer for engaging in fraud. Section 9884.7, subdivision (e) defines fraud to include violations of the Automotive Repair Act that involve (1) "actual fraud" or "constructive fraud" under the civil code, (2) intentional or negligent misrepresentation of a material fact; (3) a promise or representation not made in good faith; (4) an intentional failure to disclose a material fact; and (5) various species of theft defined by Penal Code section 484.

10. Complainant proved this cause for discipline by a preponderance of the evidence. While working at Hernandez's shop and under Hernandez's ARD registration and SCTOS license, Gutierrez issued electronic smog certificates of compliance for the

2006 Toyota Tacoma and the 2007 Dodge Charger, without performing a bona fide inspection of either vehicle. In so doing, respondent Gutierrez committed actual fraud and failed to comply with California's Motor Vehicle Inspection Program. Hernandez may be held responsible for this misconduct under these circumstances.

THIRD CAUSE FOR DISCIPLINE – MATERIAL VIOLATION OF THE AUTOMOTIVE REPAIR ACT

11. As the third cause for discipline, complainant asserts respondent Hernandez's ARD registration is subject to discipline under section 9884.7, subdivision (a)(6). That subdivision authorizes the Director to discipline the registration of an automotive repair dealer for materially failing to comply with the Automotive Repair Act and its regulations.

12. Complainant proved this cause for discipline against Hernandez by a preponderance of the evidence, for the same reasons stated in Legal Conclusions 6-11.

FOURTH CAUSE FOR DISCIPLINE – VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM

13. As the fourth cause for discipline, complainant asserts respondent Hernandez's SCTOS license is subject to discipline under Health and Safety Code section 44072.2, subdivision (a). That subdivision authorizes the Director to discipline a license issued under the Motor Vehicle Inspection Program, including a SCTOS license, for violating any aspect of the statutes or regulations governing the program. Health and Safety Code section 44002 provides that the Director holds all power and authority granted under the Automotive Repair Act (§§ 9880-9889.53) for enforcing the Motor Vehicle Inspection Program (Health & Saf. Code, §§ 44000-44127). Health and

Safety Code section 44015, subdivision (b), provides that a licensed smog check station shall only issue a certificate of compliance if a vehicle meets the requirements of section 44012.

14. Complainant proved this cause for discipline by a preponderance of the evidence, for the same reasons stated in Legal Conclusions 6-13.

**FIFTH CAUSE FOR DISCIPLINE – FAILURE TO COMPLY WITH REGULATIONS
PURSUANT TO MOTOR VEHICLE INSPECTION PROGRAM**

15. As the fifth cause for discipline, complainant asserts respondent Hernandez's SCTOS license is subject to discipline under Health and Safety Code section 44072.2, subdivision (c). That subdivision authorizes the Director to discipline a SCTOS licensee for violating regulations adopted under the Motor Vehicle Inspection Program. These regulations include:

- a prohibition on falsely issuing or obtaining a certificate of compliance or noncompliance (Cal. Code Regs., tit. 16 (CCR), § 3340.24, subd. (c));
- the requirement that a licensed smog check inspector and/or repair technician shall inspect, test, and repair vehicles in compliance with Health and Safety Code sections 44012 and 44035 and CCR section 3340.42 (CCR, § 3340.30 subd. (a));
- the requirement that licensed smog check stations shall issue a certificate of compliance or noncompliance only after the vehicle has been inspected in accordance with the procedures provided by the regulations and after confirming that the vehicle's required emissions control equipment and devices are installed and functioning correctly (CCR, § 3340.35, subd. (c));

- the specific testing requirements based on the vehicle's model year, as well as the general requirement that all tests include a visual inspection of the vehicle's emission control components to ensure those systems are properly installed (CCR, § 3340.42);
- a prohibition on the creation of false or misleading records in connection with the services that a licensee provides (CCR, § 3373).

16. Complainant proved this cause for discipline by a preponderance of the evidence, for the same reasons stated in Legal Conclusions 6-15.

SIXTH CAUSE FOR DISCIPLINE – DISHONESTY, FRAUD, OR DECEIT

17. As the sixth cause for discipline, complainant asserts respondent Hernandez's SCTOS license is subject to discipline under Health and Safety Code sections 44702.2, subdivision (d), and 44072.10, subdivision (c). Those sections authorize the Director to discipline a SCTOS licensee for engaging in dishonest, fraudulent, or deceitful acts in connection with the licensed activity.

18. Complainant proved this cause for discipline by a preponderance of the evidence, for the same reasons stated in Legal Conclusions 6-17.

SEVENTH CAUSE FOR DISCIPLINE - VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM

19. As the seventh cause for discipline, complainant asserts respondent Gutierrez's SCI license is subject to discipline under Health and Safety Code section 44702.2, subdivision (a). That subdivision authorizes the Director to discipline a license issued under the Motor Vehicle Inspection Program, including an SCI license, for violating any aspect of the statutes or regulations governing the program. As noted

above, section 44012 requires that tests at smog check stations shall be performed in accordance with procedures set forth by the Department, including conducting a visual inspection of the vehicle's emission parts. In addition, section 44015 provides that a licensed smog check station shall only issue a certificate of compliance if a vehicle meets the requirements of section 44012.

20. Complainant proved this cause for discipline by a preponderance of the evidence. Respondent Gutierrez failed to perform vehicle smog checks at least two times in accordance with the Department's procedures, and failed to conduct a visual inspection of the emission components to ensure they are present and functioning correctly. Moreover, respondent Gutierrez caused certificates of compliance to be issued for two vehicles without ensuring that those vehicles were tested and inspected properly.

**EIGHTH CAUSE FOR DISCIPLINE – FAILURE TO COMPLY WITH REGULATIONS
PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM**

21. As the eighth cause for discipline, complainant asserts respondent Gutierrez's SCI license is subject to discipline under Health and Safety Code section 44702.2, subdivision (c), because he failed to comply with many provisions of the CCR discussed in Legal Conclusion 15. In addition, this cause for discipline also asserts respondent Gutierrez failed to comply with CCR section 3340.41, subdivision (c), which prohibits any person from entering false information into the OIS system.

22. Complainant proved this cause for discipline by a preponderance of the evidence. Respondent Gutierrez failed to perform vehicle smog checks at least two times in accordance with the Department's procedures. He also falsely entered

information into the OIS system in connection with issuing certificates of compliance that should not have been issued.

NINTH CAUSE FOR DISCIPLINE - DISHONESTY, FRAUD, OR DECEIT

23. As the ninth cause for discipline, complainant asserts respondent Gutierrez's SCI license is subject to discipline under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c). As noted above, those sections authorize the Director to discipline licensees, including SCI licensees, for engaging in dishonest, fraudulent, or deceitful acts in connection with the licensed activity.

24. Complainant proved this cause for discipline by a preponderance of the evidence for the reasons stated in Legal Conclusions 19-23.

Level of Discipline

25. Under CCR section 3395.4, the Bureau has promulgated *Guidelines for Disciplinary Orders and Terms of Probation (Guidelines)* (Rev. June 2021). The Guidelines required consideration of specified factors in aggravation and mitigation when determining appropriate discipline.

26. Respondents presented little mitigation evidence. With respect to respondent Hernandez, he testified that he was not at the business and did not perform the unlawful inspections that are the subject of this action. Although Hernandez may not have been present for the unlawful inspections, it is clear from his testimony that he exercised little oversight over Gutierrez and the business more generally, creating the conditions under which Gutierrez could commit fraud. As for respondent Gutierrez, counsel argued that he is just a "young man" who made a mistake by passing vehicles improperly. He admitted he felt shame and remorse for his

fraud and for breaking his word to Hernandez that he would perform smog checks truthfully.

27. Under the *Guidelines*, the minimum recommended discipline for proven violations is the stayed revocation of registration or license and placement on probation for a period of two to five years. The maximum recommended discipline is revocation. Multiple violations or multiple instances of the same violations are to be taken into consideration when determining the level of discipline.

28. Having considered the totality of the evidentiary record here, revocation of respondents' licenses and registrations is consistent with the Bureau's highest priority of protecting the public.

Cost Recovery

29. California Code of Regulations, title 1, section 1042 (section 1042), sets forth the requirements that an agency must comply with to recover its costs in a proceeding under the Administrative Procedure Act. Section 1042 requires that a declaration regarding services provided by a regular agency employee must include "the general tasks performed, the time spent on each task, and the method of calculating the cost."

30. The AG Certification and Investigation Certification describe the tasks performed, the time billed, and the billing rate by each professional. The AG Certification and Investigation Certification satisfy the requirements outlined in section 1042.

//

//

31. A registrant or licensee found to have violated the Automotive Repair Act may be directed to pay a sum not to exceed the reasonable costs of investigation and prosecution of the case. (§ 125.3.) Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, 45, the Bureau must exercise its discretion to reduce or eliminate costs to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus, the [Bureau] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Bureau, in imposing costs in such situations, must consider the licensee's subjective good-faith belief in the merits of his or her position, and the Bureau must consider whether the licensee has raised a colorable defense. The Bureau must also consider the licensee's ability to make cost award payments.

32. Neither respondent presented evidence warranting a reduction of the Bureau's costs of investigation and prosecution. Moreover, neither party presented evidence of either respondent's finances or inability to pay a cost recovery award.

33. Cause therefore exists under section 125.3 for the Bureau to recover its costs of investigation and prosecution totaling \$13,922.41 in this case, jointly and severally, from respondents.

ORDER

Automotive Repair Dealer Registration Number ARD 302850 issued to respondent Cosme Antonio Hernandez doing business as Hernandez Smog is revoked.

Smog Check Test Only Station License Number TC 302850 issued to respondent Cosme Antonio Hernandez is revoked.

Smog Check Inspector License Number EO 643478 issued to respondent David Gutierrez is revoked.

Cosme Antonio Hernandez and David Gutierrez shall, jointly and severally, pay to the Bureau its costs of investigation and enforcement in the amount of \$13,922.41.

DATE: 10/22/2025

Signed copy on file

TAYLOR STEINBACHER

Administrative Law Judge

Office of Administrative Hearings