

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

In the Matter of the Accusation Against:

JIMMY JETHRA HENG, DBA JK SMOG,

Automotive Repair Dealer Registration No. ARD 303015

Smog Check, Test-Only, Station License No. TC 303015

and

JIMMY JETHRA HENG,

Smog Check Inspector License No. EO 138605

Respondent.

Agency Case No. 79/24-4238

OAH No. 2025010330

PROPOSED DECISION

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, heard this matter on August 27 and 28, 2025, by videoconference.

Deputy Attorney General Justin R. Surber represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

Attorney William D. Ferreira represented respondent Jimmy Jethra Heng, who was not present.

The record closed and the matter was submitted for decision on August 28, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 13, 2022, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration (Registration) No. ARD 303015 to respondent Jimmy Jethra Heng, doing business as JK Smog. On May 17, 2023, the Bureau issued Smog Check, Test Only, Station License (Station License) No. TC 303015 to respondent. Both the Registration and the Station License were in full force and effect at all times relevant to the accusation and are set to expire on July 31, 2026, unless renewed.

JK Smog was also certified as a STAR station. The certification was issued on October 4, 2023, but was suspended on November 28, 2023.

2. On May 11, 2023, the Bureau issued Smog Check Inspector License (Inspector License) No. EO 138605 to respondent. The Inspector License was in full force and effect at all times relevant to the accusation and is set to expire on July 31, 2027, unless renewed.

3. On September 23, 2024, acting in his official capacity as the Chief of the Bureau, complainant Patrick Dorais filed the accusation, alleging that respondent made untrue or misleading statements certifying that vehicles passed smog check inspection and were in compliance with applicable laws and regulations, issued false or misleading certificates of compliance and vehicle inspection reports (VIR), and committed acts involving dishonesty, fraud or deceit, and that these acts constitute cause to discipline the registration and licenses of respondent. Complainant also seeks the costs of investigation and enforcement in this matter.

4. Respondent filed a timely notice of defense, and this proceeding followed.

Clean Plugging

5. California's Smog Check Program requires most motor vehicles in California to take and pass a smog check inspection and receive a certificate of compliance every two years when their registrations are renewed and also when a vehicle's title is transferred.

6. Since 2015, smog check inspections of 2000 model year and newer gas-powered vehicles and 1998 and newer diesel vehicles are performed pursuant to the Bureau's On Board Diagnostic Inspection System (OIS) inspection protocol. A biometric palm scanner is used to scan the technician's palm to verify that the technician is the individual performing the inspection. A bar code scanner is used to input the vehicle identification number (VIN) and renewal information from the Department of Motor Vehicles (DMV). The OIS protocol requires that the on-board diagnostic (OBD) system of the vehicle being tested be connected to the Bureau's database by means of a data acquisition device (DAD). Through the DAD, vehicles transmit their electronic VIN and

a communication protocol, which is the manufacturer's specific "language" that is programmed into a vehicle to relay information about the vehicle. A parameter identification (PID) count is also transmitted. The PID count is the number of data points reported by the vehicle's computer. Examples of PIDs include the engine speed in revolutions per minute (RPM), the throttle position as measured by a throttle position sensor, the manifold absolute pressure as measured by a manifold air pressure sensor, and the mass air flow as measured by a mass air flow sensor.

7. As part of the OIS protocol, the technician is required to confirm that the inputted VIN is correct and matches the vehicle being tested. The technician also performs visual and functional tests on the vehicle as outlined in the Bureau's Smog Check Manual. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected. A functional test is performed of the malfunction indicator light (MIL). The OIS software determines whether a vehicle passes based on the results of the OBD, visual, and functional tests.

8. If a vehicle passes inspection, a certificate of compliance, which includes a vehicle inspection report (VIR) is issued. The information from the smog check inspection is transmitted to the Bureau's Vehicle Information Database (VID), and the inspector is required to certify under penalty of perjury that the inspector performed the inspection in accordance with Bureau requirements and that the information listed was true and accurate.

9. The Bureau can access the VID to review test data on smog check inspections performed at any smog check station, or to search for, retrieve, and print a test record for a particular vehicle which has been tested. The VID has an internal clock that records the time and date for each inspection. If a vehicle passes inspection, the vehicle information and tests results are electronically transmitted to the DMV.

10. Clean plugging is the illegal practice of using another vehicle's OBD system, or another device, during the OBD portion of a smog inspection to generate passing data readings or diagnostic information for the purpose of issuing a certificate of compliance to a vehicle that is not in smog compliance and/or is not being tested.

Investigation

11. Michael Weaver, an automotive program representative for the Bureau, testified at hearing about his investigation into respondent. He started an investigation on March 5, 2024, and conducted a detailed review of the VID data for the smog check inspections performed at JK Smog. Weaver observed a pattern of vehicles being certified despite the fact that the data transmitted during the inspection included information and PID counts that did not match the expected data. He detailed his findings in an investigation report dated May 23, 2024.

12. Based on his review of respondent's VID data from a time period not established by the evidence, Weaver testified that he discovered over 290 possible instances of clean plugging that occurred at JK Smog. He documented 12 instances of clean plugging based on the PID information found on the Bureau's VID.

13. Weaver explained the data he expected to find from a vehicle's PIDs while a vehicle was being tested. As part of the inspection, the technician causes the vehicle to accelerate while the OBD system is attached to the testing equipment. For a vehicle's engine speed to increase, its throttle would have to be opened in order to increase airflow through the engine. Increasing the throttle position increases the engine's speed. In turn, there would be corresponding changes to the mass air flow and manifold absolute pressure. This information would be transmitted to the Bureau's database through the DAD during the inspection.

14. In each of the 12 instances Weaver reviewed, while the engine speed changed, the throttle position remained fixed, as were the readings for mass air flow and manifold absolute pressure. Weaver explained that these discrepancies demonstrated that respondent was likely using a defeat device to create vehicle information and that the DAD was not connected to the vehicle being certified. Respondent nonetheless issued a certification of compliance and VIR for each of these vehicles.

15. Weaver did not investigate or conduct any surveillance of the JK Smog facility. He is also not aware of any consumer complaints against respondent or any disciplinary actions that were taken against respondent. He did not meet with respondent.

Respondent's Evidence

16. Respondent did not attend the hearing and did not present any evidence. However, respondent argued that complainant did not adequately investigate whether there was clean plugging occurring at the facility. Respondent also maintained that complainant failed to present evidence that the vehicles at issue in this accusation—all General Motors vehicle brands—were actually clean plugged. Respondent suggests that there may have been other causes for the inaccurate PID data transmitted by these vehicles, including that the vehicles' owners may have altered them.

Respondent's contentions are rejected.

///

///

Costs

17. Complainant incurred \$1,472.80 in investigation costs and \$6,674 in enforcement costs to prosecute this accusation, for a total of \$8,146.80. These costs are supported by certifications that describe the tasks performed, time spent on each task, and method of calculating the cost, in compliance with the requirements of California Code of Regulations, title 1, section 1042. In the absence of any evidence to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

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.)

Causes for Discipline

UNTRUE OR MISLEADING STATEMENTS – REGISTRATION

2. Business and Professions Code section 9884.7, subdivision (a)(1), provides that the Director of the Department of Consumer Affairs for the Bureau (Director) may discipline respondent's Registration where respondent has made or authorized any oral or written statement which is untrue or misleading, and which is known to be untrue or misleading. For the reasons set forth in Factual Findings 8, and 12 through 14, cause for discipline exists under Business and Professions Code section 9884.7, subdivision (a)(1).

///

FRAUD – REGISTRATION

3. Business and Professions Code section 9884.7, subdivision (a)(4), provides that respondent's Registration is subject to discipline where respondent has committed acts constituting fraud. For the reasons set forth in Factual Findings 12 through 14, cause for discipline exists under Business and Professions Code section 9884.7, subdivision (a)(4).

FALSE OR MISLEADING RECORDS – REGISTRATION

4. Business and Professions Code section 9884.7, subdivision (a)(6), provides that respondent's Registration is subject to discipline where respondent has failed to comply with the provisions of the law, or any regulations adopted pursuant to the law. Respondent violated California Code of Regulations, title 16, section 3373, by creating and issuing false and misleading certificates of compliance and vehicle inspection reports. (Factual Findings 8, 12–14.) Cause for discipline exists under Business and Professions Code section 9884.7, subdivision (a)(6).

DISHONESTY, FRAUD OR DECEIT – SMOG LICENSES

5. Health and Safety Code section 44072.2, subdivision (d), provides that the Director may discipline respondent's Station License and Inspector License if respondent has committed any act involving dishonesty, fraud, or deceit whereby another is injured. Health and Safety Code section 44072.10, subdivision (c), provides that a Station License or Inspector License "shall be revoked" where the licensee "fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles." For the reasons set forth in Factual Findings 8, and 12 through 14, cause for discipline exists under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10.

VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM – SMOG LICENSES

6. Health and Safety Code section 44072.2, subdivisions (a) and (c), provides that the Director may discipline respondent's Station License and Inspector License where respondent has violated any laws concerning the Motor Vehicle Inspection Program or regulations adopted pursuant to those laws. Health and Safety Code section 44072.10, subdivision (c)(4), provides that a Station License or Inspector License "shall be revoked" where the licensee "fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles," including "[i]ntentional or willful violation of [the Motor Vehicle Inspection Program law] or any regulation, standard, or procedure [] implementing" the law.

The evidence established that respondent clean plugged at least 12 vehicles (Factual Finding 8, 12–14). The 12 clean plug smog inspections performed by respondent involved violations of numerous statutes and regulations, including: (a) failure to perform smog tests in accordance with procedures (Health & Saf. Code, § 44012); (b) issuance of false smog certificates of compliance (Cal. Code Regs., tit. 16, § 3340.24, subd. (c)); (c) failure to inspect vehicles in accordance with Health and Safety Code section 44012 and California Code of Regulations title 16, section 3340.42 (Cal. Code Regs., tit. 16, § 3340.30, subd. (a)); (d) entering false information about vehicles being tested into the OIS (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)); (e) having electronic devices or software capable of simulating data collected from a vehicle during a smog check inspection in the approved testing area of a station (Cal. Code Regs., tit. 16, § 3340.41, subd. (h)); (f) failure to conduct the required smog tests and inspections on vehicles in accordance with Bureau specifications (Cal. Code Regs., tit. 16, § 3340.42); (g) failure to perform smog tests in accordance with the Smog Check

Manual (Cal. Code Regs., tit. 16, § 3340.45); and (h) false or misleading statements in issuing certificates of compliance and on vehicle inspection reports (Health & Saf. Code, § 44059). Cause for discipline exists under Health and Safety Code sections 44072.2, subdivisions (a) and (c), and 44072.10, subdivision (c)(4).

Other Matters

7. The Director may suspend, revoke, or place on probation the Registration for all places of business operated in California 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 laws and regulations. (Bus. & Prof. Code, § 9884.7, subd. (c).)

8. The Director may revoke or suspend any additional license issued in the name of the licensee if respondent's Station License or Inspector License is revoked or suspended. (Health & Saf. Code, § 44072.8.)

Determination of Discipline

9. In exercising its licensing and disciplinary functions, the Bureau's highest priority is the protection of the public. (Bus. & Prof. Code, § 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), as well as any factors in aggravation and in mitigation, have been considered in reaching the determination of the appropriate discipline.

The evidence established that respondent performed clean plugging on vehicles and provided false information to the Bureau. The 12 instances of clean plugging came from data that was sent from respondent's facility to the Bureau's VID, to which

respondent was required to certify under penalty of perjury that the information was true and accurate. Contrary to respondent's arguments, it is highly unlikely, if not impossible, that each vehicle subject to this accusation would have been altered by its owner or that there would have been another reason for the incorrect data. That respondent was not subject to surveillance or had been subject to prior discipline does not release him from discipline in this instance.

Given the evidence and under the circumstances, revocation is warranted for the protection of the public. It would be against the public interest to permit respondent to retain his Registration, Station License, or Inspector License.

Costs

10. Business and Professions Code section 125.3 authorizes the Bureau to recover its reasonable costs for the investigation and enforcement of the case. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Reduction of costs is not warranted in this matter. As set forth in Factual Finding 17, the Bureau's reasonable costs are \$8,146.80.

///

ORDER

1. Automotive Repair Dealer Registration No. ARD 303015, issued to respondent Jimmy Jethra Heng, doing business as JK Smog, is revoked.
2. Smog Check, Test Only, Station License No. TC 303015, issued to respondent Jimmy Jethra Heng, doing business as JK Smog, is revoked.
3. Smog Check Inspector License Number EO 138605, issued to respondent Jimmy Jethra Heng, is revoked.
4. Any additional registrations and/or licenses issued to respondent Jimmy Jethra Heng are revoked pursuant to Business and Professions Code section 9884.7, subdivision (c), and Health and Safety Code section 44072.8.
5. Respondent Jimmy Jethra Heng shall pay the Bureau of Automotive Repair its reasonable costs of the investigation and enforcement of this case in the amount of \$8,146.80.

DATE: **09/11/2025**

Signed Copy on File
MARIO M. CHOI
Administrative Law Judge
Office of Administrative Hearings