

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

In the Matter of the Accusation Against:

JESUS A. OJEDA, dba SMOG BUSTERS FONTANA

8060 Mango Ave.

Fontana, CA 92336

Automotive Repair Dealer Registration No. ARD 304994

Smog Check Test Only Station License No. TC 304994

JESUS ALBERTO OJEDA

34878 County Line Rd.

Yucaipa, CA 92399

Smog Check Inspector License No. EO 642867

Respondents.

Case No. 79/24-17476

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OAH No. 2025090876

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 June 19, 2026.

IT IS SO ORDERED May 12, 2026.

Original signature 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:

JESUS A. OJEDA, dba SMOG BUSTERS FONTANA,

Automotive Repair Dealer Registration No. ARD 304994

Smog Check Test Only Station License No. TC 304994

and

JESUS ALBERTO OJEDA

Smog Check Inspector License No. EO 642867,

Respondents.

Agency Case No. 79/24-17476

OAH No. 2025090876

PROPOSED DECISION

Maria Palomares, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on March 17, 2026, by videoconference.

Deputy Attorney General Matthew A. King represented Complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs. Attorney William D. Ferreira, Automotive Defense Specialists, represented Respondent Jesus A. Ojeda (Respondent Ojeda), both individually and doing business as Smog Busters Fontana (Respondent Smog Busters and collectively Respondents). Respondent Ojeda was not present at hearing.

Documents and testimony were received in evidence. The record closed, and the matter was submitted for decision at the close of the hearing.

SUMMARY

Complainant proved that Respondents engaged in clean plugging during 10 smog-check inspections, in violation of the Automotive Repair Act and the Motor Vehicle Inspection Program. Respondents presented no testimony, mitigation, or rehabilitative evidence. Revocation of the Smog Check Test Only Station License and the Smog Check Inspector License is necessary to protect the public. However, placing Respondent Smog Buster's Automotive Repair Dealer registration on probation is sufficient because the violations arose solely from their smog-check activities and do not show broader misconduct in repair-dealer operations.

FACTUAL FINDINGS

1. On February 9, 2023, the Bureau issued Automotive Dealer Registration Number ARD 304994 to Respondent Ojeda, doing business as Smog Busters Fontana. This registration remained in full force and effect for the entire period relevant to the Accusation and, per the Accusation, was scheduled to expire on February 28, 2026.

2. On March 22, 2023, the Bureau issued Smog Check Test Only Station License Number TC 304994 to Respondent Smog Busters. This license remained in full force and effect for the entire period relevant and, per the Accusation, was scheduled to expire on February 28, 2026.

3. On July 19, 2023, the Bureau issued a STAR certification to Respondent Smog Busters. The STAR certification remains active unless the Automotive Repair Dealer registration or Smog Check Test Only Station license is revoked, canceled, becomes delinquent, or suspended.

4. On January 27, 2021, the Bureau issued Smog Check Inspector License Number EO 642867 to Respondent Ojeda. This license remained in full force and effect for the entire period relevant to the Accusation and, per the Accusation, will expire on June 30, 2027.

5. On July 21, 2025, Complainant filed this Accusation in his official capacity as Chief of the Bureau. On July 17, 2025, Respondents timely filed a notice of defense, and this proceeding followed.

California's Smog Check Process

6. A smog-check inspection for model-year 2000 and newer gasoline vehicles is performed using the Bureau's On-Board Diagnostic Inspection System (OIS), the standardized testing platform required for these inspections.

7. The OIS consists of two integrated components: a computerized analyzer and a Data Acquisition Device (DAD). The DAD connects to the vehicle's diagnostic link connector beneath the dashboard and retrieves onboard-diagnostic (OBD II) information directly from the vehicle's computer. OBD II information includes data

such as the status of the malfunction-indicator lamp (check-engine light), whether emission-control components are operating properly, and whether the vehicle has completed its required self-tests.

8. The analyzer guides the licensed technician through each step of the inspection and records all data collected by the DAD. To access the analyzer and perform an inspection, the technician must log in using a Bureau-issued access badge and a biometric palm scan. These security measures ensure that only an authorized technician conducts the inspection.

9. After logging in, the technician begins the inspection by identifying the vehicle. This may be done by scanning a vehicle barcode, a DMV renewal or registration document, or entering the information manually. The analyzer records the identification method and then prompts the technician through the required visual and functional inspections.

10. Each inspection consists of two required components: the visual inspection and the functional inspection. During the functional inspection, the technician uses the DAD to establish a live connection between the analyzer and the vehicle's onboard computer. Following prompts on the analyzer, the technician initiates the OBD II check, during which the analyzer retrieves the status of the malfunction-indicator lamp, any diagnostic trouble codes, and the readiness status of the required OBD II monitors. The OBD II information collected during this process determines whether the vehicle passes or fails the functional portion of the smog check.

11. During certain inspections, the analyzer also instructs the technician to raise the engine speed above idle so that the system may collect dynamic OBD II data

(dynamic data). Dynamic data is recorded during the functional inspection, but is not used to determine whether the vehicle passes or fails. Nevertheless, when the analyzer prompts the technician to collect dynamic data, that step cannot be bypassed and must be completed for the inspection to proceed.

12. After the analyzer completes all required checks, it displays whether the vehicle passed the visual and functional inspections. If the analyzer indicates a pass, the technician may issue a Certificate of Compliance. To finalize the inspection, the technician authorizes the certificate through the analyzer and signs the Vehicle Inspection Report (inspection report) under penalty of perjury, certifying that the inspection was performed on the vehicle presented and in accordance with Smog Check Program requirements.

13. All smog-inspection data, including OBD II information and any dynamic data, is transmitted automatically to the Bureau's Vehicle Information Database.

Respondents' 10 Smog Checks At Issue

14. Respondent Ojeda performed smog-check inspections on 10 vehicles for Smog Busters. These inspections were conducted on the following dates and vehicles: a 2003 Toyota Corolla CE on February 9, 2024 (Exh. 8, p. A95); a 2002 Toyota Tacoma Double Cab Prerunner on February 22, 2024 (Exh. 10, p. A108); a 2000 Mercedes-Benz E320 on February 24, 2024 (Exh. 11, p. A120); a 2001 Toyota Echo on February 24, 2024 (Exh. 12, p. A131); a 2005 Toyota Corolla CE on February 27, 2024 (Exh. 13, p. A143); a 2002 Mitsubishi Galant ES on February 28, 2024 (Exh. 14, p. A155); a 2002 Toyota Camry LE on April 1, 2024 (Exh. 15, p. A166); a 2000 Chevrolet Tahoe C1500 on April 2, 2024 (Exh. 16, p. A178); a 2002 GMC Yukon XL C1500 on April 6, 2024 (Exh. 17, p. A194); and a 2000 Honda Civic EX on April 11, 2024 (Exh. 18, p. A207).

15. For each inspection identified in factual finding 14, Respondent Ojeda logged into the OIS analyzer with his Bureau-issued access badge and biometric palm scan, identified the vehicle using one of the approved methods, and proceeded through the visual and functional portions of the inspection as prompted by the OIS. For each of the 10 inspections, the analyzer also prompted Respondent Ojeda to collect dynamic OBD II data, and that step was completed as part of the inspection.

16. For all 10 inspections, the analyzer reported passing results. Based on those results, Respondent Ojeda authorized the issuance of a Certificate of Compliance and signed each corresponding Vehicle Inspection Report under penalty of perjury. By signing the reports, Respondent Ojeda certified that he had performed proper inspections and that the certificates issued were valid.

17. The Bureau's OIS Test Details report shows that the 2003 Toyota Corolla CE listed in factual finding 14 had failed a smog-check inspection on January 11, 2024, at a different station (Benny's Smog) due to incomplete OBD II readiness monitors. (Exh. 9, p. A107.)

Bureau's Investigation of Respondents

18. Bureau Program Representative Steve Koch testified at the hearing. Mr. Koch has worked for the Bureau for 26 years. For about 24 of those years, he has investigated smog-check cases. Before joining the Bureau, he worked as an automotive mechanic for about 10 years. He holds an associate degree in automotive technology and has maintained both smog-inspector and repair-technician licenses since 1996.

19. As part of his regular duties, Mr. Koch reviews smog check data transmitted by stations to the VID. In 2024, he identified inspection records associated with Respondents that showed unusual dynamic data patterns: engine speed increased

while other essential sensor readings remained unchanged. Based on these data anomalies, he initiated a formal investigation.

20. In reviewing the 10 inspections described in factual finding 14, Mr. Koch noted that when the analyzer prompted an increase in the vehicle's engine speed, the recorded revolutions per minute (RPM) rose, but throttle position, airflow (mass-airflow sensor), manifold absolute pressure (where applicable), and ignition-timing readings for the vehicle remained fixed at idle values. He explained that a functioning engine cannot increase RPM without corresponding changes in these parameters because increased RPM requires more air and fuel and timing changes to sustain combustion.

21. The inspection reports for each of the 10 inspections in factual finding 14 reflect this pattern: idle-level readings for the vehicle's throttle position, airflow, manifold absolute pressure (when applicable), and ignition timing throughout the test, with only the vehicle's RPM changing after the analyzer's prompt to raise engine speed. (Exhs. 8, pp. A104-A106; 10, pp. A117-A119; 11, pp. A129-A130; 12, pp. A140-A142; 13, pp. A152-A154; 14, pp. A163-A156; 15, pp. A175-A177; 16, pp. A192-A193; 17, pp. A205-A206; 18, pp. A218-A219.)

22. Based on the uniform data pattern and his experience—including prior encounters with OBD-II simulators (defeat devices)—Mr. Koch concluded that Respondents did not perform the 10 inspections on the vehicles identified in the Certificates of Compliance. He opined that Respondents used a defeat device in each inspection because the pattern of rising RPM with flatlined sensor outputs matches simulator-generated signals rather than the signals produced by a real engine. The use of a defeat device is also known as "clean plugging."

23. “Clean plugging” is the Bureau’s term for conducting an OBD-II functional inspection by connecting the analyzer cable to a source other than the vehicle presented—such as a different vehicle, an OBD-II simulator, or software that mimics vehicle data—so the analyzer receives false signals rather than the vehicle’s actual data.

24. Mr. Koch stated that defeat devices cost thousands of dollars. He stated that such devices are not available to ordinary consumers and are used almost exclusively by smog technicians. In more than two decades of investigations, he has never encountered a consumer-owned or concealed simulator; the simulators he observed were in technicians’ possession. Mr. Koch concluded it is implausible that 10 unrelated consumer vehicles arrived already equipped with hidden simulators capable of producing the observed data.

25. Mr. Koch explained that performance “tuners” modify software to increase power output. Mr. Koch stated that tuners may disable certain readiness monitors but do not disable essential sensors—ignition timing, throttle position, or mass airflow—because doing so would render the vehicle inoperable. He added that he has never seen a tuner produce the uniform, flatlined sensor readings observed here. Mr. Koch concluded that performance modifications or tuners cannot plausibly account for the data recorded in the 10 inspections performed by Respondents.

26. Respondents have no prior citations or disciplinary history.

Analysis

27. Mr. Koch’s testimony is credible and entitled to substantial weight. He has 26 years of experience with the Bureau, including more than two decades investigating smog-check violations. That background gives him extensive familiarity

with OIS data patterns and the operation of defeat devices. He also explained, in clear and straightforward mechanical terms, how an engine and its OBD II sensors normally respond when engine speed increases: the engine must draw in more air, add more fuel, and adjust ignition timing, and those changes appear in the sensor data. Mr. Koch's testimony was technically supported, internally consistent, and unrebutted. Under Evidence Code section 780, these factors make his testimony highly reliable.

28. The alternative explanation offered by Respondents—that all 10 vehicles arrived with pre-installed defeat devices or with tuners capable of producing identical flatlined sensor data—is inherently improbable. Courts may reject explanations that are inherently improbable or contradicted by the facts. (*South Bay Transportation Co. v. Gordon Sand Co.* (1988) 206 Cal.App.3d 650, 657.) Defeat devices cost thousands of dollars, and in more than 20 years of investigations, Mr. Koch has never encountered a hidden, consumer-installed simulator. It is therefore unlikely that 10 unrelated vehicle owners independently obtained and installed such equipment within a short period for a single smog inspection. Tuners are also an implausible explanation. Although tuners may alter readiness-monitor behavior, they do not disable the essential sensors—throttle position, mass airflow, manifold pressure, or ignition timing—because disabling those sensors would prevent the vehicle from operating. The absence of corroboration and the inconsistency of these explanations with established mechanical principles weigh against them. Under Evidence Code section 780, the theory that 10 unrelated vehicles arrived equipped with devices capable of generating identical simulator-type data is rejected.

29. The dynamic data from all 10 inspection reports show the same pattern. The RPM increased, but throttle-position, mass-airflow, manifold-pressure (when applicable), and ignition-timing values remained at idle. A functioning engine cannot

raise RPM without changes in those values. Respondents offered no evidence of any condition that could produce such readings. The uniform data pattern, together with Mr. Koch's credible testimony, supports the conclusion that Respondent Ojeda used a simulator during each of the 10 smog-check inspections. By relying on simulator-generated values to complete the OBD II functional check and issue Certificates of Compliance, Respondents engaged in clean plugging.

Prosecution and Investigative Costs

30. The Bureau seeks reimbursement of \$3,234.00 in enforcement costs and \$2,981.82 in investigation costs. Of the enforcement costs, the Department of Justice billed \$3,234.00 for attorney time incurred through March 10, 2026, as documented in the declaration of Deputy Attorney General Matthew A. King. The investigation costs consist of \$432.32 incurred by Program Representative II Raymond Gottenbos and \$2,549.50 incurred by Mr. Koch. The total amount of costs requested is \$6,215.82.

31. Respondents did not dispute the accuracy of costs or submit evidence of inability to pay costs.

LEGAL CONCLUSIONS

1. The Bureau administers and enforces California's Smog Check Program on behalf of the Department of Consumer Affairs. (Health & Saf. Code, §§ 44000–44002.) The Bureau is responsible for licensing automotive repair dealers, smog-check stations, and smog-check inspectors (Bus. & Prof. Code, § 9884 et seq.; Health & Saf. Code, § 44030 et seq.), and for ensuring that vehicles are inspected in accordance with statutory and regulatory testing procedures. (Health & Saf. Code, §§ 44012, 44015; Cal. Code Regs., tit. 16 (Reg.), §§ 3340.30–3340.42.)

2. The Bureau's mandate includes protecting the public by preventing the improper certification of vehicles that do not meet emissions requirements and by disciplining licensees who violate the Automotive Repair Act or the Motor Vehicle Inspection Program. (Bus. & Prof. Code, § 9880.3; Health & Saf. Code, § 44072.2.)

3. Under Business and Professions Code sections 118, subdivision (b), and 9884.13, and Health and Safety Code section 44072.6, the suspension, expiration, or voluntary surrender of an automotive repair dealer registration, smog-check station license, or smog-check inspector license does not deprive the Bureau of authority to initiate or continue a disciplinary proceeding or to issue a decision affecting the license or registration.

Burden of Proof and Evidence

4. When an agency alleges licensee misconduct in an accusation, Complainant bears the burden of proving the allegations by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916–917.) A 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.)

5. In evaluating the evidence, the trier of fact may view a party's weaker or less satisfactory evidence with distrust when stronger and more satisfactory evidence was within that party's power to produce. (Evid. Code, § 412.) The trier of fact may also draw reasonable inferences from a party's failure to explain or deny evidence or facts presented against that party, or from the party's willful suppression of evidence. (Evid. Code, § 413.)

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6. Circumstantial evidence is evaluated the same as direct evidence, and a fact-finder may rely on it when the inferences drawn are reasonable and supported by the record. (*People v. Towler* (1982) 31 Cal.3d 105, 118–119.) Findings may rest entirely on circumstantial proof when the physical evidence and surrounding circumstances logically support the conclusion reached. (*People v. Bloyd* (1987) 43 Cal.3d 333, 342–343.) But while circumstantial evidence can be sufficient, the inferences drawn from it must follow logically from the evidence; conclusions based on speculation or conjecture do not constitute substantial evidence. (*Feduniak v. Cal. Coastal Com.* (2007) 148 Cal.App.4th 1346, 1360.)

Discipline Against Respondent Ojeda’s Automotive Repair Dealer Registration

7. Business and Professions Code section 9884.7, subdivision (a), authorizes the Bureau to deny, suspend, revoke, or place on probation the registration of an automotive repair dealer when the dealer cannot show a bona fide error. The statute lists several grounds for discipline, including making or authorizing untrue or misleading statements, engaging in conduct that constitutes fraud, and failing in any material respect to comply with the Automotive Repair Act or its regulations (Bus. & Prof. Code, § 9884.7, subds. (a)(1), (4), (6)).

8. Neither the Automotive Repair Act nor its regulations define “bona fide error.” In ordinary usage, a bona fide error is an unintentional and good-faith mistake made without an intent to mislead. (Black’s Law Dict. (5th ed. 1979) p. 161; see also *Merrill v. Dept. of Motor Vehicles* (1969) 71 Cal.2d 907, 920–921.)

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FIRST CAUSE FOR DISCIPLINE: UNTRUE OR MISLEADING STATEMENTS

9. Respondent Ojeda made written statements that were untrue or misleading when he used a simulator during the 10 inspections in factual finding 14 and then signed and issued Certificates of Compliance reporting that each vehicle had passed a valid smog check. By issuing those certificates, Respondent Ojeda represented that the OBD II data used to determine compliance came from the vehicles presented for inspection, even though the data were simulator-generated rather than vehicle-generated. The evidence establishing this pattern was consistent, technically supported, and unrebutted, and thus satisfies the Bureau's burden of proof under the preponderance standard. Respondent Ojeda provided no explanation or evidence within his control that might have contradicted or qualified the Bureau's showing. Under Evidence Code section 412, the absence of stronger and more satisfactory evidence from Respondent Ojeda further supports the reliability of the Bureau's proof. Accordingly, there is cause for discipline against Respondent Ojeda's Automotive Repair Dealer Registration under Business and Professions Code section 9884.7, subdivision (a)(1).

SECOND CAUSE FOR DISCIPLINE: FRAUD

10. Under Business and Professions Code section 9884.7, subdivision (e), fraud includes a misrepresentation of a material fact, whether intentional or the result of gross negligence. Respondent Ojeda used a simulator during each of the 10 smog-check inspections and then issued Certificates of Compliance stating that each vehicle had passed a valid test. Using a simulator necessarily concealed the material fact that the OIS data did not originate from the vehicles presented for inspection. By issuing certificates based on simulator-generated data that he knew were false, Respondent Ojeda intentionally misrepresented material facts within the meaning of

Business and Professions Code section 9884.7, subdivision (e). These facts establish fraud as an independent ground for discipline against Respondent Ojeda's Automotive Repair Dealer Registration under Business and Professions Code section 9884.7, subdivision (a)(4).

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

11. The Smog Check Program requires the technician to perform an OBD II functional inspection on the vehicle presented for testing and to obtain diagnostic information directly from that vehicle through the DAD connection. (Health & Saf. Code, §§ 44012, 44015; Reg., §§ 3340.40–3340.42.) These requirements are mandatory components of the inspection and must be completed before a Certificate of Compliance may lawfully be issued.

12. Respondent Ojeda did not perform the OBD II functional inspection that the Smog Check Program requires. In all 10 inspections, the analyzer did not receive diagnostic information from the vehicles presented, but instead recorded simulator-generated values. An inspection based on simulated data does not satisfy any part of the required OBD II functional test. By issuing Certificates of Compliance without conducting a functional inspection on the vehicles, Respondent Ojeda failed to comply with essential statutory and regulatory requirements governing smog-check inspections. This conduct constitutes a material failure to comply with the Automotive Repair Act and its regulations under Business and Professions Code section 9884.7, subdivision (a)(6), and subjects Respondent Ojeda's Automotive Repair Dealer Registration to discipline.

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Discipline Against Respondent Ojeda's Smog Check Test Only Station License

13. Pursuant to Health and Safety Code section 44072.2, a director may suspend, revoke, or take other disciplinary actions against a licensee for specified actions or violations.

FOURTH CAUSE FOR DISCIPLINE: VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM

14. Health and Safety Code section 44072.2, subdivision (a), authorizes discipline when a Smog Check station violates statutory duties established under the Motor Vehicle Inspection Program. Those duties include performing all emissions-control and OBD II functional tests in accordance with department-prescribed procedures using diagnostic information obtained directly from the vehicle, and issuing a Certificate of Compliance only after those required tests have been lawfully completed with actual vehicle data. (Health & Saf. Code, §§ 44012, 44015, subd. (b).)

15. Complainant met its burden of proving that Respondent Ojeda did not comply with statutory duties. As established in factual finding 29, none of the 10 inspections obtained OBD II data from the vehicles presented; each relied on simulator-generated values instead of performing the functional inspection required by Health and Safety Code section 44012. Respondent Ojeda nevertheless issued Certificates of Compliance, contrary to Health and Safety Code section 44015, subdivision (b). These violations establish cause to discipline Respondent Ojeda's Smog Check Test-Only Station license under Health and Safety Code section 44072.2, subdivision (a).

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

16. Health and Safety Code section 44072.2, subdivision (c), authorizes the Director to discipline a Smog Check station license when the license holder fails to comply with regulations adopted under the Motor Vehicle Inspection Program. Those regulations prohibit falsely or fraudulently issuing Certificates of Compliance (Reg., § 3340.24, subd. (c)); require technicians to perform all inspections and tests in accordance with the procedures prescribed by California Code of Regulations, title 16 (Regulation), section 3340.42 and the test methods incorporated by Health and Safety Code section 44012 (Reg., § 3340.30, subd. (a)); and allow a station to issue a Certificate of Compliance only after completing the inspection using those prescribed procedures and confirming required emission-control components are present and functioning (Reg., §§ 3340.35, subd. (c), 3340.42).

17. Complainant proved by a preponderance of the evidence that Respondent Ojeda failed to comply with the regulations adopted under the Motor Vehicle Inspection Program. As established in factual finding 29, none of the 10 inspections used OBD II data from the vehicles presented; Respondent Ojeda instead relied on simulator-generated values and therefore did not perform the inspections using the procedures required by Regulation, section 3340.42. Respondent Ojeda then issued Certificates of Compliance based on the simulated data, conduct that violates Regulation, sections 3340.24, subdivision (c), and 3340.35, subdivision (c), which prohibit issuing a certificate without completing the required inspection using the prescribed methods. Respondent also failed to perform the inspections as required by Regulation, section 3340.30, subdivision (a). Cause therefore exists to discipline

Respondent Ojeda's Smog Check Test Only Station license under Health and Safety Code section 44072.2, subdivision (c).

SIXTH CAUSE FOR DISCIPLINE: DISHONESTY, FRAUD, OR DECEIT

18. Health and Safety Code section 44072.2, subdivision (d), authorizes discipline when a Smog Check station commits any act involving dishonesty, fraud, or deceit by which another is injured. Health and Safety Code section 44072.10, subdivision (c), further defines fraudulent inspection practices and requires revocation when a station or technician fraudulently certifies a vehicle. Those practices include clean plugging, clean piping, and other methods of falsifying inspection results. (Health & Saf. Code, § 44072.10, subd. (c)(1).)

19. Complainant proved by a preponderance of the evidence that Respondents engaged in dishonest inspection practices. As established in factual finding 29, all 10 inspections relied on simulator-generated OBD II data rather than data from the vehicles presented, conduct that constitutes clean plugging and falsifies inspection results within the meaning of Health and Safety Code section 44072.10, subdivision (c). Respondent Ojeda then issued Certificates of Compliance based on the simulated data, injuring vehicle owners and undermining the integrity of the Smog Check Program. This conduct constitutes dishonesty under Health and Safety Code section 44072.2, subdivision (d), and provides cause to discipline Respondent Ojeda's Smog Check Test Only Station license.

Discipline Against Respondent Ojeda's Smog Check Inspector License

20. Complainant seeks to discipline Respondent Ojeda's Smog Check Inspector License for violating Health and Safety Code section 44072.2, subdivisions (a), (c), and (d). Under these provisions, a smog check inspector may be disciplined for

violating statutory duties, failing to comply with program regulations, or engaging in dishonest inspection practices.

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

21. Health and Safety Code section 44072.2, subdivision (a), permits discipline when an inspector violates statutory duties under the Motor Vehicle Inspection Program. Those duties include personally performing the required emissions-control tests at a licensed station, in accordance with Health and Safety Code section 44032, and completing those tests as prescribed in Health and Safety Code section 44012 before authorizing a Certificate of Compliance under Health and Safety Code section 44015, subdivision (b).

22. Complainant proved by a preponderance of the evidence that Respondent Ojeda did not perform these duties. As established in factual finding 29, Respondent Ojeda did not obtain OBD II data from the vehicles during any of the 10 inspections; instead, he used simulator-generated values and therefore did not perform the functional inspections required by Health and Safety Code section 44012. As no valid inspections occurred, Respondent Ojeda could not lawfully authorize Certificates of Compliance consistent with Health and Safety Code section 44015, subdivision (b). Respondent Ojeda's failure to perform required inspections constitutes a violation of the Motor Vehicle Inspection Program under Health and Safety Code section 44072.2, subdivision (a), and supports discipline against his Smog Check Inspector License.

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

23. Health and Safety Code section 44072.2, subdivision (c), permits discipline when a licensee fails to comply with regulations adopted under the Motor Vehicle Inspection Program. Those regulations prohibit falsely issuing Certificates of Compliance (Reg., § 3340.24, subd. (c)); require inspectors to perform all tests using the methods prescribed in Regulation, section 3340.42 and in accordance with Health and Safety Code section 44012 (Reg., § 3340.30, subd. (a)); and allow a certificate to be issued only after a station completes the required inspection using those prescribed procedures (Reg., § 3340.35, subd. (c)). Regulation, section 3340.41, subdivision (c), prohibits entering vehicle information or emissions-control data for any vehicle other than the one being tested and prohibits entering false information into the OIS.

24. Respondent Ojeda failed to comply with these regulatory requirements. As Respondent Ojeda used simulator-generated OBD II data in all 10 inspections instead of retrieving data from the vehicles, he did not perform the inspections using the methods required by Regulation, sections 3340.42 or 3340.30, subdivision (a). Respondent Ojeda also caused the simulator-generated values to be transmitted to the OIS as the vehicles' diagnostic data, conduct that violated Regulation, section 3340.41, subdivision (c), which prohibits entering false vehicle information into the system. Respondent then issued Certificates of Compliance based on those simulated results, contrary to Regulation, sections 3340.24, subdivision (c), and 3340.35, subdivision (c). These violations constitute failures to comply with regulations adopted under the Motor Vehicle Inspection Program and support discipline against Respondent Ojeda under Health and Safety Code section 44072.2, subdivision (c).

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NINTH CAUSE FOR DISCIPLINE: DISHONESTY, FRAUD, OR DECEIT

25. Health and Safety Code section 44072.2, subdivision (d), permits discipline when an inspector engages in dishonest conduct. Health and Safety Code section 44072.10, subdivision (c), identifies fraudulent inspection practices—including clean plugging and other methods that falsify test results—as dishonest conduct requiring revocation.

26. Complainant proved by a preponderance of the evidence that Respondent Ojeda engaged in dishonest inspection practices. As established in factual finding 29, Respondent Ojeda personally used simulator-generated OBD II data in all 10 inspections and caused that simulated data to be transmitted to the OIS as the vehicles' diagnostic information. He then authorized Certificates of Compliance based on those false results. No evidence supports the suggestion that any vehicle arrived with altered systems capable of producing those uniform simulator patterns. Respondent Ojeda's conduct constitutes dishonesty under Health and Safety Code section 44072.2, subdivision (d), and supports discipline against his Smog Check Inspector License.

Disposition

27. The Bureau's Guidelines for Disciplinary Orders and Terms of Probation, revised June 2021 (Guidelines), set forth the recommended discipline for violations of the Business and Professions Code, the Health and Safety Code, and Bureau regulations. For violations of Business and Professions Code section 9884.7, subdivisions (a)(1), (a)(4), and (a)(6), the Guidelines recommend two to five-year probation terms. Violations of Health and Safety Code section 44072.2, subdivisions (a) and (c), carry similar minimum recommendations, while violations of Health and Safety

Code sections 44012 and 44015 require at least five years of probation. Violations of Health and Safety Code section 44072.2, subdivision (d), also suggest a minimum five-year probation term. However, fraudulent inspections under Health and Safety Code section 44072.10, subdivision (c), warrant revocation with no probation option.

28. The Guidelines also identify mitigating and aggravating factors to consider. Respondents have no prior discipline, warnings, or consumer monetary loss, which provides limited mitigation. Still, Respondents offered no testimony, explanation, or evidence of retraining or corrective action, and undertook no steps to address the violations. The aggravating circumstances are substantial in that Respondent Ojeda, doing business as Respondent Smog Busters, performed 10 fraudulent inspections in a short period using simulator-generated OBD II data. The Guidelines identify such a pattern as a serious aggravating factor, and Respondent Ojeda's refusal to acknowledge wrongdoing or implement corrective measures further heightens the severity.

29. California courts hold that the purpose of licensing discipline is to protect the public, not to punish the licensee. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451; *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Under this standard, discipline must address the risk posed by the licensee and ensure future compliance. Respondent Ojeda's repeated use of a simulator, issuance of 10 fraudulent certificates, and lack of remedial action demonstrate conduct that poses a significant risk to the integrity of the Smog Check Program if left unsupervised.

30. However, the violations proven against Respondent Ojeda's Automotive Repair Dealer registration arise only from his conduct during smog-check inspections and do not show broader problems in his dealer's repair operations. The record reflects no unrelated violations or consumer harm. A five-year probation term, with

Bureau oversight, is therefore sufficient to protect the public with respect to Respondent Ojeda's dealer registration. For this reason, there is no need to include a suspension term.

31. In contrast, the misconduct involving Respondent Smog Buster's Smog Check Test Only Station License and Respondent Ojeda's Smog Check Inspector License involves fraudulent inspection practices identified in Health and Safety Code section 44072.10, subdivision (c), for which the Guidelines recommend revocation. Considering Respondents' dishonest actions associated with performing smog checks, and the lack of meaningful mitigation, revocation of the Smog Check Test Only Station License and the Smog Check Inspector License is necessary to protect the integrity of the Smog Check Program and the public.

Other Matters

32. Business and Professions Code section 9884.7, subdivision (c), permits the Bureau to revoke, suspend, or place on probation an automotive repair dealer registration when the dealer has engaged in a course of repeated and willful violations of the Automotive Repair Act or its regulations. The violations proven here arose solely from Respondent Ojeda's conduct while performing smog-check inspections and do not reflect broader misconduct in his general automotive-repair operations. The record contains no evidence of unrelated repair-dealer violations. Accordingly, the statutory standard for disciplining the Automotive Repair Dealer registration under Business and Professions Code section 9884.7, subdivision (c), is not met.

33. Health and Safety Code section 44072.8 allows the Bureau, when revoking or suspending a license issued under the Smog Check statutes, to likewise revoke or suspend any additional Smog Check license held by the same respondent.

Respondent Ojeda holds only one station license and one inspector license, and both are already subject to revocation under this decision. Because no other Smog Check licenses exist, Health and Safety Code section 44072.8 does not provide any additional remedy in this case.

Costs

34. Complainant is entitled to recover the reasonable costs of investigation and prosecution. (Bus. & Prof. Code, § 125.3.) In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the Supreme Court identified factors relevant to determining the reasonableness of requested costs. These factors include: (1) the licensee's success in reducing or defeating the charges; (2) the licensee's good-faith belief in the merits of his position; (3) whether the licensee raised a colorable challenge to the proposed discipline; (4) the licensee's ability to pay; and (5) whether the scope of the investigation was appropriate for the misconduct involved. (*Zuckerman, supra*, 29 Cal.4th at p. 45.)

35. Complainant seeks \$3,234.00 in enforcement costs and \$2,981.82 in investigation costs, for a total of \$6,215.82. Applying the *Zuckerman* factors, no reduction is warranted. Respondents did not succeed in having any charges dismissed or discipline reduced, raised no good-faith or colorable defenses, and presented no evidence of financial hardship. The Bureau's investigation was appropriate given the nature and seriousness of the violations. The full amount of \$6,215.82 is therefore reasonable and recoverable.

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ORDER

1. The Automotive Repair Dealer Registration number ARD 304994, issued to Respondent Ojeda doing business as Smog Busters Fontana, is revoked. However, the revocation is stayed, and Respondent Ojeda is placed on probation for five years on the terms and conditions set forth below.

2. Respondent's Smog Check Test-Only Station License number TC 304994 and his Smog Check Inspection License number EO 642867 are revoked.

PROBATION TERMS AND CONDITIONS

3. **Obey all Laws:** During the period of probation, Respondent shall comply with all federal and state statutes, regulations, and rules governing all the Bureau of registrations and licenses held by Respondent.

4. **Quarterly Reporting:** During the period of probation, Respondent shall report either by personal appearance or in writing, as determined by the Bureau, on a schedule set by the Bureau, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

5. **Report Financial Interests:** Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation, report any financial interest which any Respondent or any partners, officers, or owners of any Respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

6. **Access to Examine Vehicles** and Records: Respondent shall provide the Bureau representatives unrestricted access to examine all vehicles (including parts), service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide the Bureau representatives unrestricted access to all records pursuant to the Bureau laws and regulations.

7. **Tolling of Probation:** If, during probation, Respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise cease to do business in the jurisdiction of California, Respondent shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondents obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondents are not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

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8. **Violation of Probation:** If Respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in the decision. Once Respondent is served notice of the Bureau's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

9. **Maintain Valid License:** Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau, including any period during which suspension or probation is tolled. If a Respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by that respondent within 30 days of that date. If a Respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal, that Respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

10. **Cost Recovery:** Respondents shall pay the Bureau \$6,215.82 for the reasonable costs of the investigation and enforcement of case number 79/24-17476. The Bureau or its designee may establish a payment plan for cost recovery; however, Respondent shall pay the full amount of cost recovery no later than six months before probation terminates. Respondents shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case number 79/24-17476. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The

Bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

11. **Completion of Probation:** Upon successful completion of probation, Respondent's affected registration and licenses will be fully restored or issued without restriction, if Respondent meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

12. **License Surrender:** Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request that the stay be vacated. Such a request shall be made in writing to the Bureau. The Director and the Bureau Chief reserve the right to evaluate a respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

Respondent may not petition the Director for reinstatement of a surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of the Bureau at any time before the date of the originally scheduled completion of probation. If a Respondent applies to the Bureau for a registration or license at any time after that date, that Respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to the Bureau and left outstanding at the time of surrender.

13. **Training Course:** Within 60 days of the effective date of a decision, Respondent shall attend a Write It Right presentation provided by a Bureau representative at a location, date, and time determined by the Bureau.

Within 180 days of the effective date of a decision, Respondent shall submit to the Bureau satisfactory evidence of completion of a laws and regulations training course that meets the following requirements: (1) The course shall be instructor-led, in a classroom or online setting, and shall include instruction on registrant or licensee compliance with the laws and regulations related to the following areas: (A) Estimate Requirements, (B) Customer Authorization, (C) Invoice Requirements, (D) Accepted Trade Standards, (E) Sublet Repair, (F) Return of Parts, (G) Advertising Requirements, (H) Guarantees and Warranties, (I) Maintenance of Records; (2) The course shall include an examination to verify the Respondent can apply the laws and regulations in daily automotive repair transactions; (3) The course shall have a minimum of (8) eight hours of dedicated time to instruction and examination, where examination time shall be between thirty (30) minutes to an hour; and (4) The course shall require a minimum score of 70 percent on the examination to provide proof of completion.

If, in the case of a registered automotive repair dealer or licensed Smog Check, or lamp and/or brake station, the registration or license is issued to a partnership, corporation, or a Limited Liability Company, then it shall be the responsibility of the registered automotive repair dealer or licensed Smog Check, or lamp and/or brake station manager, or another person who directly or indirectly controls or conducts the business to complete any required training course specified in the decision.

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14. **Supervision Requirements:** Respondent shall not delegate his or her supervisory duties, as they relate to the business activities relevant to the probationary registration and/or license, to another person during the period of probation. Any persons employed by Respondent to carry out such business activities shall be directly supervised by Respondent. If a bona fide medical condition arises during the period of probation, which temporarily prevents Respondent from exercising direct supervision over employees, notice and medical substantiation of the condition shall be submitted to the Bureau within ten (10) days of the medical affirmation of the condition.

DATE:04/15/2026


Maria Palomares (Apr 15, 2026 13:19:55 PDT)

MARIA PALOMARES

Administrative Law Judge

Office of Administrative Hearings