

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

In the Matter of the Accusation Against:

**MARLON EZEQUIEL UMANZOR, dba SMOGWAY**

211 S. Mt. Vernon Ave. Unit B

San Bernardino, CA 92410

Automotive Repair Dealer Registration No. ARD 306766

Smog Check Test Only Station License No. TC 306766

**MARLON EZEQUIEL UMANZOR**

211 S. Mt. Vernon Ave. Unit B

San Bernardino, CA 92410

Smog Check Inspector License No. EO 644692

Respondents.

Case No. 79/24-15162

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OAH No. 2025121021

**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 November 13, 2026.

IT IS SO ORDERED October 6, 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:**

**MARLON EZEQUIEL UMANZOR, DBA SMOGWAY,**

**Automotive Repair Dealer Registration No. ARD 306766,**

**Smog Check, Test-Only, Station License No. TC 306766,**

**and**

**MARLON EZEQUIEL UMANZOR,**

**Smog Check Inspector License No. EO 644692,**

**Respondents.**

**Case No. 79/24-15162**

**OAH No. 2025121021**

**PROPOSED DECISION**

Taylor Steinbacher, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 21 and 22, 2026.

Stephanie J. Lee, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Attorney Frank C. Brucculeri of Frank Brucculeri Law Corporation represented respondent Marlon Ezequiel Umanzor individually (respondent Umanzor) and doing business as Smogway (respondent Smogway).

Oral and documentary evidence was received. On July 28, 2026, the ALJ reopened the record at complainant's counsel's request to substitute a dated copy of a certification of prosecution costs, which was previously marked and admitted as Exhibit 3. The record was closed, and the matter was submitted for decision on July 28, 2026, per the ALJ's order.

## **SUMMARY**

The Bureau reviewed data collected during smog inspections conducted by respondent Umanzor at the business he owned, respondent Smogway. That data revealed that 10 vehicles inspected between July and December 2024 showed unusual data patterns consistent with "clean plugging," a method of fraudulently passing vehicles during a smog inspection.

Complainant proved by a preponderance of the evidence that respondents conducted 10 smog inspections using clean plugging. Given the scope and magnitude of this

fraud, revocation of all Bureau licenses issued to respondent Umanzor and respondent Smogway are warranted. Respondent Umanzor, both individually and as owner of Smogway, is ordered to pay the Bureau's costs of investigation and prosecution, albeit at a reduced scale, due to his demonstrated inability to pay those costs.

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. On August 21, 2023, the Bureau issued ARD Registration number 306766 to respondent Umanzor, doing business as Smogway. This registration was in effect at all times relevant to the Accusation. (Ex. 2, p. A51.)

2. On February 1, 2024, the Bureau issued Smog Check, Test-Only, Station License number TC 306766, to Smogway. This license was in effect at all times relevant to the Accusation. (Ex. 2, p. A51.)

3. On November 20, 2023, the Bureau issued Smog Check Inspector License number EO 644692 to respondent Umanzor. This license was in effect at all times relevant to the Accusation. (Ex. 2, p. A52.)

4. On October 14, 2025, complainant, acting in his official capacity, signed the Accusation, alleging violations of the Business and Professions Code, the Health and Safety Code, and associated regulations based on respondents' unlawful smog check inspection of 10 vehicles between July and December 2024. (Ex. 1, pp. A1–A21.)

5. On November 25, 2025, respondent Umanzor, through counsel, filed a Notice of Defense on behalf of himself and Smogway. (Ex. 1, pp. A36–A43.)

## **California's Smog Check Program**

6. California's smog check program is designed to improve air quality and to protect public health by reducing vehicle emissions. The smog check program requires owners to submit their vehicles to smog inspections and obtain certificates of compliance. A smog check inspection determines whether required emission control devices and systems are installed and functioning properly, and detects and reduces tampering and emission control failures. Licensed smog check inspectors and technicians at licensed smog check stations conduct these mandated smog check inspections and are the only persons authorized by the Bureau to perform official inspections.

7. A smog check inspection consists of a three-part test. Under the older system of smog check inspections, the emission sample test analyzes tailpipe emissions obtained while the vehicle's engine is running. The visual inspection requires a smog test inspector to verify the presence of required emission control systems and components. The functional test requires an inspector to physically test certain emission system components.

8. Since March 2015, the smog check inspection has been updated to exempt most vehicles built after 1999 from the emission sample portion of the smog inspection. However, the updated test requires the inspector to use an On-Board Diagnostic Inspection System (BAR-OIS or OIS) and conduct an On-Board Diagnostics Generation Two (OBDII) functional test. The BAR-OIS consists of a bar code scanner, computer, printer, and a scan tool known as a Data Acquisition Device (DAD).

9. To perform the OBDII functional test, the bar code scanner is used to input the technician information, the vehicle identification number (VIN), and

Department of Motor Vehicles (DMV) renewal information into the BAR-OIS computer. The inspector then connects a scan tool, the DAD, to the vehicle's Diagnostic Link Connector (DLC), a plug found inside the vehicle's passenger cabin. Through a continuous internet connection, the DAD forms a link between the BAR-OIS computer and the vehicle's DLC. When requested by the BAR-OIS, the DAD retrieves OBDII data from the vehicle.

10. Data retrieved and recorded during a BAR-OIS smog check includes Parameter Identifications (PIDs): data points reported by the vehicle's on-board computer to the BAR-OIS. Some of these PID data points include:

Engine speed in revolutions per minute (RPM);

Throttle position as measured by a throttle position sensor mounted onto the throttle shaft, measured in a percentage of opening from 0 percent at idle and near or up to 100 percent at full throttle;

Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kPa). Typical readings for a normally aspirated vehicle undergoing smog check inspection are as follows: 25 kPa to 45 kPa at idle, with a subsequent decrease as the RPM is raised.

Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract, measured in grams per second (grams/sec).

11. If a vehicle passes the visual and functional test, it passes the overall smog inspection. At the conclusion of an inspection, the printer of the BAR-OIS produces a Vehicle Inspection Report (VIR) that contains inspection results. The smog

check inspector must sign the VIR to indicate that the inspection was performed within Bureau regulations. A certificate of compliance, with a unique control number, is issued and transmitted electronically to the Vehicle Information Database (VID) maintained by the Bureau.

12. The VID contains the dates and times of all smog check inspections, the identity of the vehicles tested (license plates and VINs), emissions readings, all data gathered during a smog check inspection, the identity of the technicians performing the testing, and the identifying numbers on the electronic certificate of compliance issued after a successful inspection. The VID receives smog check results immediately after inspection. The VID transmits an electronic certificate of compliance to the DMV for the DMV's use in the vehicle registration process. Bureau employees can access the VID to review test data related to smog check inspections performed at any smog check station, and the Bureau can search for, retrieve, and print a test record for every vehicle that has been tested.

13. Some smog check stations and smog check inspectors use various methods to fraudulently issue smog certificates to vehicles that will not pass a smog check test on their own, or in some instances, are not even present when the test is performed. One method is "clean plugging," which involves using another vehicle's properly functioning emissions system, or a defeat device/simulator, to generate false passing data and fraudulently issue smog certificates to vehicles that are non-compliant or not actually tested. Defeat devices simulate engine operation during a smog check inspection by transmitting to the vehicle database emissions data that has been modified or entirely substituted for the data of the vehicle purportedly being inspected.

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## **Respondents' 10 Smog Check Inspections At Issue**

14. Respondent Umanzor performed smog check inspections on the following 10 vehicles while working at Smogway: (1) a 2002 Chevrolet Avalanche K1500, on July 17, 2024; (2) a 2006 Volkswagen New Beetle 2.5L, Option Package 2, on August 1, 2024; (3) a 2003 Toyota Sequoia SR5, on August 1, 2024; (4) a 2002 Mercedes-Benz ML 320, on August 5, 2024; (5) a 2002 BMW 325i, on August 7, 2024; (6) a 2001 Nissan Maxima GXE, on August 8, 2024; (7) a 2001 BMW 525i Automatic, on November 8, 2024; (8) a 2005 Honda Accord LX, on December 6, 2024; (9) a 2003 Toyota Camry LE, on December 6, 2024; and (10) a 2004 Dodge Ram 1500 ST, on December 17, 2024. For each of these 10 inspections, the OIS software prompted respondent Umanzor to collect certain dynamic emissions data, and he completed that step as part of the inspection. (See Ex. 4, pp. A74–A79; Exs. 4A–4J.)

15. For all 10 inspections, the OIS software reported passing results. Based on those results, respondent Umanzor authorized the issuance of a certificate of compliance for each vehicle and signed each corresponding VIR under penalty of perjury. By signing the reports, respondent Umanzor certified that he properly inspected the 10 vehicles and that the certificates issued were valid.

## **Bureau's Investigation of Smogway**

16. Bureau Program Representative (PR) Raul Garcia testified at the hearing. PR Garcia has worked for the Bureau for over six years, and has worked in the automotive industry generally for over 20 years, including as an owner of an automotive repair shop and a licensed smog technician. He currently holds a smog inspector license.

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17. One of PR Garcia's job duties is to review data collected by the Bureau during smog inspections to determine whether that data is consistent with a genuine smog inspection or if there are indicia of clean plugging during those inspections. In August 2024, PR Garcia reviewed data collected during Smogway's smog inspections. According to PR Garcia, the data showed improbable patterns, i.e., engine speed increased while other essential sensor readings remained unchanged.

18. At the hearing, PR Garcia explained that during an OIS smog check inspection, the vehicle is monitored and PID data readings are obtained while the engine is idling and after the smog check inspector prompts the driver to increase engine speed to a certain level and maintain that speed for a period of time. To increase engine speed, the vehicle's throttle must be opened to increase airflow through the engine. An increase in throttle position also increases engine speed, as measured in RPMs, and results in a corresponding increase in the mass air flow rate and a change in manifold absolute pressure.

19. According to PR Garcia, clean plugging is apparent when data recorded during an OIS smog check show that engine speed, as measured in RPM, increases during the test while throttle position, mass air flow rate, and manifold absolute pressure remain unchanged. Because engine speed, as measured in RPM, cannot increase without corresponding increases in the throttle position, mass airflow rate, and manifold absolute pressure, test data in cases that do not reflect such an increase indicate that the inspector used a defeat device to simulate engine speed readings for a vehicle that was not actually tested.

20. PR Garcia explained that, in reviewing the 10 inspections described in Factual Findings 14 and 15, during the entire period the subject vehicle's dynamic data was collected, the only parameter that changed was the engine's RPM. Thus, even

though the vehicle's engine speed increased, as reflected in the increased RPM, in response to directions from the OIS software, the vehicle's throttle position, airflow, and manifold absolute pressure (where applicable) readings remained fixed at idle values. He explained that a functioning engine cannot increase its RPM without corresponding changes in these parameters because higher RPM requires additional air and fuel, along with adjustments in ignition timing, to sustain combustion.

21. According to PR Garcia, the VIRs for each of the 10 inspections described in Factual Findings 14 and 15 reflect the same pattern: idle-level readings for each vehicle's throttle position, airflow, and manifold absolute pressure (when applicable) throughout the test, despite an increase in engine speed and corresponding RPMs. (Ex. 4A, pp. A93–A95; Ex. 4B, pp. A100–A105; Ex. 4C, pp. A110–A112; Ex. 4D, pp. A124–A126; Ex. 4E, pp. A132–A134; Ex. 4F, pp. A140–A142; Ex. 4G, pp. A147–A149; Ex. 4H, pp. A154–A156; Ex. 4I, pp. AA161–A163; Ex. 4J, pp. A168–A171.)

22. PR Garcia opined that respondent Umanzor engaged in clean plugging to obtain a passing score for each vehicle. According to PR Garcia, the unchanged readings of the throttle position, ignition timing advance, manifold absolute pressure, and airflow when the vehicle's engine RPM was increased from idle could not have occurred if the analyzer had been connected to the vehicle purportedly tested. He also added that such readings are consistent with signals generated by a defeat device rather than signals produced by a real engine. PR Garcia noted that directly observing clean plugging and recovering a defeat device is rare, and the Bureau commonly investigates clean plugging solely by reviewing data from VIRs. In light of his conclusion that respondent Umanzor engaged in clean plugging, PR Garcia further concluded that respondent Umanzor did not perform BAR-approved smog check inspections on the 10 vehicles, that his license was used to input false information into

the OIS system for those vehicles, and that fraudulent smog check certificates of compliance were issued to those 10 vehicles.

23. PR Garcia noted that Smogway previously failed two of the 10 vehicles: the 2003 Toyota Sequoia on July 25, 2024, and the 2004 Dodge Ram on January 25, 2024. (Ex. 4C, pp. A114–A119; Ex. 4J, pp. A173–A175.) Although Smogway failed the 2003 Toyota Sequoia because the vehicle’s check engine light was on, PR Garcia stated that the data noted in the VIR for that failing test showed the kinds of readings to be expected for a legitimate smog inspection, where there are corresponding changes in the throttle position sensor, mass air flow sensor, and spark timing parameters characteristic of or expected for normal engine operation. With respect to the 2004 Dodge Ram, Smogway collected no data during the earlier inspection because, during the functional inspection, the OBDII monitor noted issues with the catalyst, oxygen sensor, and evaporative system. PR Garcia had no opinion on whether failing these two vehicles was generally consistent with a licensee using a defeat device to create false VIR data.

24. On cross-examination, PR Garcia testified it is his understanding that VID data collected during smog inspections is transmitted, checked, and housed by a third-party contractor called Voyatek. PR Garcia does not personally check whether the VID data collected is valid and accurate, but he understands the Bureau has measures in place to ensure the data is reliable. PR Garcia also conceded that he was not present at Smogway when any of the suspect smog inspections took place. But PR Garcia rejected the possibility that a customer-installed defeat device transmitted the data for the 10 suspect inspections, as customer-installed defeat devices are expensive (between \$10,000 and \$15,000), whereas defeat devices used by smog inspection stations are cheap (as low as \$50). Moreover, only the technician will know when the

BAR-OIS prompts the technician to press on the accelerator, so a nearby customer would have little way to know when to engage a customer-installed defeat device (even if it could be operated wirelessly, which PR Garcia did not concede was possible).

## **Respondents' Evidence**

25. Respondent Umanzor testified that he uses the proceeds from his business, Smogway, to help support his parents in El Salvador and his girlfriend and children in Mexico. Given how much his business means to his family's welfare, he asserted that he would never jeopardize his license by using a defeat device or issuing fraudulent certificates of compliance. Respondent Umanzor claimed that he did not know what clean plugging was until he received the Bureau's Accusation against him and he researched the matter on the internet. He has no explanation why the data for the 10 suspect inspections was recorded as it was.

26. According to respondent Umanzor, in the nearly three years the Bureau has licensed him, he has never had any license discipline proceedings (aside from this action) or any consumer complaints.

27. Obtaining a license from the Bureau involved a substantial investment in time and money for respondent Umanzor. He enrolled and passed a six-month course before obtaining his licenses from the Bureau at a cost of \$2,000. He also took out a \$10,000 loan to open his smog inspection shop, and he pays \$1,200 a month in rent for Smogway's business premises. If he lost his license, he would default on the loan and the lease, as he would have no way to pay them without revenue from his smog inspection business.

28. Respondent Umanzor conducts all the smog checks at Smogway. He does not remember the 10 cars the Bureau alleges provided suspect inspection data,

as he inspects many vehicles each year. Although he does not remember the 10 vehicles at issue here, respondent Umanzor testified that he follows the same procedure for every vehicle he inspects, including plugging the DAD directly into the vehicle and inspecting other parts of the vehicle.

29. Respondent Umanzor has ordered cameras for his business to capture every smog check he performs to provide video evidence that no defeat devices or other tampering methods are employed for any vehicle he inspects. He is also willing to undertake additional training and comply with probationary terms if his licenses are put on probation.

## **Analysis**

30. PG Garcia's testimony is credible and entitled to substantial weight. He has over 6 years of experience with the Bureau investigating smog-check violations, and he also has extensive experience in the automotive repair industry. PG Garcia is intimately familiar with OIS data patterns and how defeat devices operate. He explained, in clear and straightforward mechanical terms, how an engine and its sensors normally respond when engine speed increases and explained that the data drawn from the 10 vehicles were inconsistent with normal vehicle operation. PG Garcia's testimony was technically supported, internally consistent, and un rebutted.

31. Respondent Umanzor denied engaging in clean plugging. However, the evidence supporting that denial was not persuasive. Respondent Umanzor admitted performing the smog inspection on all 10 vehicles. In response to the Bureau's evidence, respondents made speculative assertions that the Bureau's data, which a third-party vendor houses, is unreliable. But respondents did not provide a technical or factual basis for his assertion that the Bureau's data is unreliable. Respondents also

asserted, without evidence, that customers installed their own defeat devices without their knowledge, such that respondent Umanzor cannot be responsible for the suspect inspections he conducted. In contrast, PG Garcia credibly testified that direct physical observation of a vehicle during a smog inspection is not required to determine whether clean plugging has occurred, and his testimony that it is improbable that 10 customers installed their own defeat devices was logical and credible.

32. Respondents introduced into evidence to a previous Bureau decision from 2020 called Sherman Way Mobile Service, OAH No. 2019011088. In that decision, the Bureau acknowledged that customer-installed defeat devices exist and have been used in the past. Although the ALJ can take official notice of these findings for purposes of this Proposed Decision (*see Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482; *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564–1565), respondents adduced no evidence that customer-installed defeat devices were employed for the 10 inspections at issue here. Rather, respondents speculated that because five of the vehicles were inspected for change-of-ownership purposes, the owners had an incentive to install their own defeat devices, as in the Sherman Way Mobile Service case. This evidence, which is circumstantial at best, does not rebut the other credible, logical, and well-supported evidence complainant proffered here.

33. The evidence that two of the vehicles were previously inspected by Smogway and later passed with improbable VIR data neither supports nor detracts from respondents' theory of the case. On the one hand, those failing tests could be consistent with an inspector properly performing a smog check and failing the vehicle. On the other hand, it could be evidence that the smog inspector knew the vehicle had failed previously and, on the second test, intentionally used a defeat device so the vehicle would not fail again.

34. The data from all 10 inspection reports show the same pattern. While the RPM increased, the throttle position, mass airflow, manifold pressure, and spark timing remained unchanged, which is contrary to what is expected for a gasoline-burning engine. The uncharacteristic data pattern, combined with PG Garcia's credible testimony, supports the conclusion that a defeat device was used during each of the 10 smog check inspections performed by respondent Umanzor. By relying on simulator-generated values to complete the smog check inspection and issue certificates of compliance, respondent Umanzor and respondent Smogway engaged in clean plugging.

## **Costs**

35. Complainant requests that respondents be ordered to reimburse the Bureau 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 Stephanie J. Lee, with an attached billing summary, which states that the Attorney General's Office billed the Board for \$4,263.75 in legal fees and costs in this matter (AG Certification); and (2) a Certification of Investigation Costs and a log specifying 36 hours of investigation, with a total cost of \$3,707.88 (Investigation Certification). (Ex. 3.) The total of these amounts is \$7,971.63.

## **LEGAL CONCLUSIONS**

### **Applicable Law**

1. The Bureau administers and enforces California's Smog Check Program on behalf of the Department. (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 (CCR), §§ 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 registrants and licensees who violate the Automotive Repair Act or the Motor Vehicle Inspection Program. (Bus. & Prof. Code, § 9880.3; Health & Saf. Code, § 44072.2.)

3. If an ARD cannot show a bona fide error, the Bureau may suspend, revoke, or place on probation its registration if the dealer or one of its employees or technicians commits any of the following acts or omissions: (1) making any written or oral statement which it knew or should have known was untrue or misleading, (2) any conduct constituting fraud, or (3) failure in any material respect to comply with the Automotive Repair Act or the regulations adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subds. (a)(1), (a)(4), (a)(6).) Fraud includes a misrepresentation in any manner of a material fact, whether intentionally false or due to gross negligence. (Bus. & Prof. Code, § 9884.7, subd. (e)(2).)

4. If an ARD cannot show a bona fide error, the Bureau may suspend, revoke, or place on probation its registration if the dealer or one of its employees or technicians commits any of the following acts or omissions: (1) making any written or oral statement which it knew or should have known was untrue or misleading, (2) any conduct constituting fraud, or (3) failure in any material respect to comply with the Automotive Repair Act or the regulations adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subds. (a)(1), (a)(4), (a)(6).) Fraud includes a misrepresentation in any manner,

whether intentionally false or due to gross negligence, of a material fact. (Bus. & Prof. Code, § 9884.7, subd. (e)(2).)

5. The Bureau may suspend, revoke, or take other disciplinary action against a station license; a Smog Check Inspector license; or a Smog Repair Technician license if the licensee violates any law under the Motor Vehicle Inspection Program or the regulations adopted pursuant to it. (Health & Saf. Code, § 44072.2, subds. (a), (c).)

6. The Bureau may suspend, revoke, or take other disciplinary action against a Smog Check Inspector if the licensee commits any act involving dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, § 44072.2, subd. (d).)

7. The Bureau must revoke the license of any Smog Check technician or station licensee who fraudulently certifies vehicles or participates in fraudulent vehicle inspections. (Health & Saf. Code, § 44072.10, subd. (c).)

## **Standard and Burden of Proof**

8. 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.) Discipline Against Respondent Smogway.

## **FIRST CAUSE FOR DISCIPLINE (UNTRUE OR MISLEADING STATEMENTS)**

9. Complainant seeks to discipline respondent Smogway's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(1), for making or authorizing statements it knew or should have known were untrue or misleading.

10. Complainant proved by a preponderance of the evidence that respondent Smogway's ARD registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(1), because respondent Smogway made statements which it knew, or in the exercise of reasonable care, should have known were untrue or misleading. Between July 17, 2024, and December 17, 2024, respondent Smogway, through its owner and only smog check technician, respondent Umanzor, issued smog certificates of compliance for 10 vehicles that were not tested or inspected in compliance with applicable laws and regulations.

### **SECOND CAUSE FOR DISCIPLINE (FRAUD)**

11. Complainant seeks to discipline respondent Smogway's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(4), for committing acts constituting fraud.

12. Complainant proved by a preponderance of the evidence that respondent Smogway's ARD registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(4). Between July 17, 2024, and December 17, 2024, respondent Smogway, through its owner and only smog check technician, respondent Umanzor, committed fraud by issuing smog certificates of compliance for 10 vehicles without performing bona fide inspections of the vehicles' emission control devices and systems.

### **THIRD CAUSE FOR DISCIPLINE (MATERIAL VIOLATION OF THE AUTOMOTIVE REPAIR ACT)**

13. Complainant seeks to discipline respondent Smogway's ARD registration under Business and Professions Code section 9884.7, subdivision (a)(6), for committing material violations of the Automotive Repair Act.

14. Complainant proved by a preponderance of the evidence that respondent Smogway's ARD registration is subject to discipline under Business and Professions Code section 9884.7, subdivision (a)(6). Between July 17, 2024, and December 17, 2024, respondent Smogway, through its owner, respondent Umanzor, materially violated the Automotive Repair Act by issuing electronic smog certificates of compliance for 10 vehicles without performing bona fide inspections of the vehicles' emission control devices and systems.

**FOURTH CAUSE FOR DISCIPLINE (VIOLATIONS OF THE MOTOR VEHICLE  
INSPECTION PROGRAM)**

15. Complainant seeks to discipline respondent Smogway's Smog Check, Test-Only, Station License, under Health and Safety Code section 44072.2, subdivision (a), for violating certain provisions of the Motor Vehicle Inspection Program.

16. Complainant proved by a preponderance of the evidence that respondent Smogway's Smog Check, Test-Only, Station License is subject to discipline under Health and Safety Code section 44072.2, subdivision (a), for the following violations of the Health and Safety Code: (1) section 44012, by failing to ensure that the emission control tests were performed on 10 vehicles in accordance with procedures prescribed by the Department; and (2) section 44015, subdivision (b), by issuing electronic smog certificates of compliance for 10 vehicles without ensuring that the vehicles were properly tested and inspected to determine whether they complied with Health and Safety Code section 44012.

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

17. Complainant seeks to discipline respondent Smogway's Smog Check, Test-Only, Station License, under Health and Safety Code section 44072.2, subdivision (c), for violating certain regulations of the Motor Vehicle Inspection Program.

18. Complainant proved by a preponderance of the evidence that respondent Smogway's Smog Check, Test-Only, Station License is subject to discipline under Health and Safety Code section 44072.2, subdivision (c), based on the following regulatory violations: (1) CCR, section 3340.24, subdivision (c), by falsely or fraudulently issued electronic smog certificates of compliance for 10 vehicles; (2) CCR, section 3340.30, subdivision (a), by failing to inspect, test and repair vehicles in accordance with Health and Safety Code sections 44012 and 44035, and CCR, section 3340.42; (3) CCR section 3340.35, subdivision (c), by issuing electronic smog certificates of compliance for 10 vehicles even though the vehicles had not been inspected in accordance with CCR, section 3340.42; and (4) CCR, section 3340.42, by failing to ensure that the required smog tests were conducted on 10 vehicles in accordance with the Bureau's specifications.

**SIXTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD, OR DECEIT)**

19. Complainant seeks to discipline respondent Smogway's Smog Check, Test-Only, Station License, under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), because respondent Smogway committed dishonest, fraudulent, or deceitful acts in connection with issuing fraudulent smog certificates of compliance.

20. Complainant proved by a preponderance of the evidence that respondent Smogway's Smog Check, Test-Only, Station License is subject to discipline under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), because respondent Smogway clean plugged 10 vehicles, thereby committing dishonest, fraudulent, or deceitful acts by issuing electronic smog certificates of compliance for the 10 vehicles without performing bona fide inspections of the vehicles' emission control devices and systems.

## **Discipline Against Respondent Umanzor**

### **SEVENTH CAUSE FOR DISCIPLINE (VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM)**

21. Complainant seeks to discipline respondent Umanzor's Smog Check Inspector License under Health and Safety Code section 44072.2, subdivision (a), for violating certain provisions of the Motor Vehicle Inspection Program.

22. Complainant proved by a preponderance of the evidence that respondent Umanzor's Smog Check Inspector License is subject to discipline under Health and Safety Code section 44072.2, subdivision (a), because respondent Umanzor, in performing smog inspection of the 10 subject vehicles, violated the following sections of the Health and Safety Code: (1) section 44032, by failing to perform tests of the emission control devices and systems on the 10 vehicles in accordance with Health and Safety Code section 44012; and (2) section 44015, subdivision (b), by issuing electronic smog certificates of compliance for 10 vehicles without ensuring that the vehicles were properly tested and inspected to determine whether they complied with Health and Safety Code section 44012.

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

23. Complainant seeks to discipline respondent Umanzor's Smog Check Inspector License under Health and Safety Code section 44072.2, subdivision (c), for failing to comply with regulations pursuant to the Motor Vehicle Inspection Program.

24. Complainant proved by a preponderance of the evidence that respondent Umanzor's Smog Check Inspector License is subject to discipline under Health and Safety Code section 44072.2, subdivision (c), based on the following regulatory violations: (1) CCR, section 3340.24, subdivision (c), by issuing false or fraudulent electronic smog certificates of compliance for 10 vehicles; (2) CCR, section 3340.30, subdivision (a), by failing to inspect and test the 10 vehicles in accordance with Health and Safety Code sections 44012 and 44035 and CCR, section 3340.42; (3) CCR, section 3340.41, subdivision (c), by knowingly entering false information into the emissions inspection system for 10 vehicles; and (4) CCR, section 3340.42, by failing to ensure that the required smog tests were conducted on 10 vehicles in accordance with the Bureau's specifications.

**NINTH CAUSE FOR DISCIPLINE (DISHONESTY, FRAUD OR DECEIT)**

25. Complainant seeks to discipline respondent Umanzor's Smog Check Inspector License under Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c), because respondent Umanzor committed dishonest, fraudulent, or deceitful acts in connection with issuing fraudulent smog certificates of compliance.

26. Complainant proved by a preponderance of the evidence that respondent Umanzor's Smog Check Inspector license is subject to discipline under

Health and Safety Code sections 44072.2, subdivision (d), and 44072.10, subdivision (c). Respondent Umanzor clean plugged 10 vehicles, and by doing so, committed acts involving dishonesty, fraud, or deceit by issuing electronic smog certificates of compliance for the 10 vehicles without performing bona fide inspections of the vehicles' emission control devices and systems. Respondent Umanzor's conduct deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

## **Level of Discipline**

27. The Bureau's Guidelines for Disciplinary Orders and Terms of Probation, revised June 2021 (Guidelines) recommend the level of discipline for violations of the Business and Professions Code and Health and Safety Code, including Business and Professions Code section 9884.7, subdivisions (a)(1), (a)(4), and (a)(6), and Health and Safety Code section 44072.2, subdivisions (a), (c), and (d). The recommended minimum discipline for violations of these statutes is two, three, or five years of probation. The recommended maximum penalty is revocation. For violations of Health and Safety Code section 44072.10, subdivision (c), revocation is required by statute.

28. The Guidelines set forth aggravating and mitigating factors to consider in determining the level of discipline imposed on licensees. The mitigating factors applicable here are that respondents have no history of disciplinary action and that there is no evidence of consumer loss or damage to a consumer's property. Of the fifteen aggravating factors in the Guidelines, only one applies here: evidence of conduct that constitutes fraud or gross negligence.

29. Considering the Guidelines, revocation of respondent Smogway's ARD registration is warranted. The evidence showed that respondent Smogway engaged in

a consistent pattern of unlawful practices for several months. Under these circumstances, revocation of respondent Smogway's ARD registration is appropriate to protect the public.

30. Health and Safety Code section 44072.10, subdivision (c), requires the Bureau to revoke respondent Smogway's shop's Smog Check, Test-Only, Station License and respondent Umanzor's Smog Check Inspector License. Because revocation is mandated by statute, the mitigation factors identified above are not pertinent to respondent Smogway's Smog Check, Test-Only, Station License. Regarding respondent Umanzor's Smog Check Inspector License, the evidence showed that respondent Umanzor clean plugged 10 vehicles over several months, and he did not offer any credible explanation for the unusual results of his inspections. Accordingly, revocation of respondent Umanzor's Smog Check Inspector License is warranted, considering the seriousness of his violations and to ensure public safety.

## **Other Matters**

31. The Bureau may suspend, revoke, or place on probation the registration for all places of business operated in California by an ARD upon a finding that the ARD has, or is, engaged in a course of repeated and willful violations of the Automotive Repair Act and its accompanying regulations. (Bus. & Prof. Code, § 9884.7, subd. (c).) Complainant proved respondent Umanzor, doing business as Smogway, engaged in a course of repeated and willful violations of the Automotive Repair Act and its accompanying regulations because respondent Umanzor clean plugged 10 vehicles. Cause therefore exists to discipline the registration for all places of business operated in California by respondent Umanzor under Business and Professions Code section 9884.7, subdivision (c).

32. 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. Accordingly, any other licenses issued to respondent Smogway and respondent Umanzor under the Smog Check statutes may be revoked or disciplined because of the revocation of licenses that are the subject of this proceeding.

## **Costs**

33. California Code of Regulations, title 1, section 1042, sets forth the requirements for an agency 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." The AG Certification and the Investigation Certification describe the tasks performed, the time billed, and the billing rate by each professional, and thus satisfy the requirements outlined in section 1042.

34. Under Business and Professions Code section 125.3, complainant can recover reasonable costs of investigation and enforcement of this matter. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the California Supreme Court set forth factors to consider in determining the reasonableness of costs. These factors include: (1) the licentiate's success in getting the charges dismissed or the severity of the discipline imposed reduced; (2) the licentiate's subjective good-faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate's financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.* at p. 45.)

35. Complainant requests reimbursement of \$7,721.50 in investigation and enforcement costs. After considering the *Zuckerman* factors, a reduction in costs is warranted. Respondents did not succeed in reducing the severity of the discipline imposed or raise a colorable challenge to the causes for discipline. Respondents did not demonstrate that their actions were undertaken in good faith. The scope of the Bureau's investigation was reasonable considering the alleged misconduct.

36. However, respondent Umanzor credibly explained the financial hardship that he will face due to the revocation of his licenses. That hardship, coupled with the severity of the order below, shows that it is appropriate to reduce the requested costs and find respondent Umanzor, as the owner of respondent Smogway, liable to pay \$4,000, and respondent Umanzor, individually, liable to pay \$1,000, of the Bureau's costs of prosecution and investigation, as a condition of their licenses being reinstated.

## **ORDER**

1. Automotive Repair Dealer Registration number ARD 306766 issued to respondent Marlon Ezequiel Umanzor, doing business as Smogway, is revoked.

2. Any other automotive repair dealer registration issued to respondent Marlon Ezequiel Umanzor, doing business as Smogway, is revoked under Business and Professions Code section 9884.7, subdivision (c).

3. Smog Check, Test-Only. Station License number TC 306766 issued to respondent Marlon Ezequiel Umanzor, doing business as Smogway, is revoked.

4. Smog Check Inspector License number EO 644692 issued to respondent Marlon Ezequiel Umanzor is revoked.

5. Any additional license used under Chapter 5 of Part 5 of the Health and Safety Code issued to respondent Marlon Ezequiel Umanzor, doing business as Smogway, or respondent Marlon Ezequiel Umanzor, is revoked.

6. As a condition precedent to reinstatement of the license or issuance of any new license, respondent Marlon Ezequiel Umanzor, doing business as Smogway, and respondent Marlon Ezequiel Umanzor, shall reimburse the Bureau for its costs of prosecution and investigation in the amounts of \$4,000 and \$1,000, respectively. Said amount shall be paid in full before the reinstatement of their license or issuance of any new license unless otherwise ordered by the Bureau.

DATE: 08/27/2026

*Taylor Steinbacher*

TAYLOR STEINBACHER

Administrative Law Judge

Office of Administrative Hearings