

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

**In the Matter of the Petition for an Interim Suspension Order**

**Against:**

**TUAT XUAN PHAM d.b.a. SKY FC,  
Automotive Repair Dealer Registration No. ARD 311340  
Smog Check, Test Only, Station License No. TC 311340**

**and**

**TUAT XUAN PHAM,  
Smog Check Inspector License No. EO 644755**

**Respondent.**

**Agency Case No. 79/25-6010**

**OAH No. 2025120799**

**DECISION**

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on January 16, 2026, by videoconference.

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

Attorney William D. Ferreira represented respondent Tuat Xuan Pham, who was not present.

In accordance with Business and Professions Code section 494, subdivision (d), affidavits and other documentary evidence were received, oral arguments were presented, and the record was closed.

The matter was submitted for decision on January 16, 2026.

## **FACTUAL FINDINGS**

### **Procedural History**

1. On December 9, 2025, petitioner Patrick Dorais brought this Petition for Interim Suspension Order (ISO) in his official capacity as Chief of the Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

2. Petitioner seeks an ISO under Business and Professions Code section 494 and Health and Safety Code section 44072.10 against the automotive dealer registration and smog check, test only, station license of respondent Tuat Xuan Pham, doing business as Sky FC, and against respondent's smog check inspector license, alleging that respondent committed acts in violation of the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.) and the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.), and that permitting him to continue to engage in licensed activities pending a regularly noticed evidentiary hearing would endanger the public health, safety, or welfare.

## **License History**

3. On December 20, 2023, the Bureau issued Smog Check Inspector License Number EO 644755 to respondent Tuat Xuan Pham. This license was in effect at all times relevant to this matter and is due to expire on February 28, 2026, unless renewed.

4. On January 27, 2025, the Bureau issued Automotive Repair Dealer (ARD) Registration Number ARD 311340 to respondent Tuat Xuan Pham, doing business as Sky FC. This registration was in effect at all times relevant to this matter and is due to expire on January 31, 2026, unless renewed.

5. On April 3, 2025, the Bureau issued Smog Check, Test Only, Station<sup>1</sup> License Number TC 311340 to respondent Tuat Xuan Pham, doing business as Sky FC. This license was in effect at all times relevant to this matter and is due to expire on January 31, 2027, unless renewed. Sky FC was also issued a STAR station certification on July 18, 2025.

6. There is no history of discipline on respondent's registration or licenses.

## **Smog Check Inspections and the Practice of Clean Plugging**

7. For certain vehicles in California, smog check inspections are performed using an Emission Inspection System (EIS), also known as a BAR 97, a test that includes placing a gas analyzer into the vehicle's tailpipe to measure emissions.

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<sup>1</sup> The ISO Petition states this is a Smog Check, Test-and-Repair, Station License, but the license certification reflects that it is a Smog Check, Test Only, Station License.

8. Smog check inspections of most vehicles in California are performed pursuant to the BAR-OIS protocol, which requires a functional computer test during the inspection, in addition to visual and functional inspections. As part of a BAR-OIS inspection, the on-board diagnostic generation II (OBD II) system of the vehicle being tested is connected to the station's inspection system by means of a cable and data acquisition device (DAD). The inspection system retrieves data from the vehicle's computer, which is sent to the Bureau's vehicle information database (VID). This portion of the smog inspection begins with the vehicle's engine idling; when prompted by the station's inspection system, the smog inspector steps on the throttle pedal, or manually opens the throttle, to increase the engine speed.

9. "Clean plugging" is the illegal practice of using another vehicle's on-board diagnostic system, or another device (such as a defeat device or simulator), during the on-board diagnostic portion of a smog inspection to generate passing data readings for the purpose of fraudulently issuing smog certificates to vehicles that are not in compliance or not actually tested.

10. One method of detecting clean plugging is identifying whether data electronically transmitted by the vehicle to the Bureau's VID matches the data expected for the year, make, and model of the vehicle being inspected. This can include the eVIN (electronic vehicle identification number), communication protocol, or parameter identification count.

11. During the OBD II inspection, the DAD also collects and transmits other information about the engine's operation, including:

- engine speed measured in revolutions per minute (RPM);

- throttle position measured in a percentage of opening, ranging from near zero percent at idle to near or at 100 percent at full throttle;
- manifold air pressure (MAP) measured in kilo pascals (kpa), with typical readings for a normally aspirated vehicle of 25 to 45 kpa at idle and 101 kpa at full throttle; and
- mass air flow (MAF) measured in grams per second (gps) (no information was provided as to what a typical MAF reading is).

As explained in the Weaver declaration (see Factual Finding 13), during normal engine operation at idle, the engine speed is relatively steady, throttle position is steady at or near zero percent, and the MAP and MAF readings are also steady. Opening the throttle increases RPM, with an increase in MAF and change in MAP.

12. The declaration of Barbara L. Weller, Ph.D., an air resources supervisor for the California Air Resources Board, dated January 22, 2018, established that air pollution is a serious health concern in California and the smog check program is an important control to help reduce vehicle pollution and improve public health.

### **Alleged Clean Plugging Violations**

13. This petition is based upon the declaration of Michael Weaver, a Program Representative employed by the Bureau, and the documents attached to the Weaver declaration. Weaver's duties include inspecting stations and reviewing smog check data. He is a licensed smog check inspector and smog check repair technician.

## **CLEAN PLUGS #1–10**

14. Weaver reviewed the Bureau's VID and OIS test data for smog check inspections at Sky FC. Weaver found a pattern of vehicles being certified with engine operating parameters not corresponding to normal engine operation, which he concluded showed that the vehicles receiving smog certificates were not tested during the OBD II functional test, constituting clean plugging. Weaver identified 10 smog inspections, conducted under respondent's smog check inspector license at Sky FC between April 3, 2025 (the date on which Sky FC received its Smog Check, Test Only, Station License) and April 12, 2025, listed in the declaration as Clean Plugs #1 through #10. For each of these 10 inspections, Weaver listed the vehicle make, model, and VIN, and described some of the information collected during the OBD II query. For each vehicle, Weaver attached a vehicle inspection report (certification of the vehicle as passing smog inspection); printouts labeled as OIS Test Details, Inspection Details, and OBD Dynamic Data; and Dynamic Data Charts.

15. For each of the 10 inspections, Weaver's declaration summarizes the time stamps, engine speeds, throttle openings, and MAF and/or MAP readings. He stated that steady idle and steady elevated engine speeds were associated with varying throttle positions and varying MAF and/or MAP readings, which "are not characteristic or expected for normal engine operation." For each of the 10 inspections, Weaver concluded that discrepancies in the OIS test data prove the DAD was not connected to the vehicle being certified, causing issuance of a fraudulent smog certificate of compliance.

## **SKY FC STATION INSPECTIONS AND RESPONDENT'S INTERVIEWS WITH BAR**

16. In his declaration, Weaver also described several station inspections conducted by Bureau staff at Sky FC and respondent's interviews at the Bureau field office and at Sky FC. Weaver attached to his declaration the reports from these station inspections, and declarations from Daniel Crozier, another Program Representative for the Bureau who accompanied Weaver on the inspections.

17. On May 2, 2025, Weaver and Crozier made a field visit to Sky FC to perform a QA inspection. When they arrived at Sky FC, they found the station was closed with no technician present. However, the VID indicated that smog inspections were currently in progress at Sky FC. During the time period that Weaver and Crozier were present at Sky FC, the VID indicated three smog inspections occurred there with certificates of compliance issued. The three vehicles purportedly being tested were not present at the station. Weaver issued a Station Inspection Report stating that testing was occurring with no technician present.

18. Respondent came to the Bureau's San Jose Field Office on May 13, 2025, to discuss the May 2 station inspection, and spoke with Weaver. Respondent admitted to Weaver that he had been performing mobile smog inspections, stating that he had insufficient space for parking and testing at Sky FC's location. Respondent stated that he had performed only four smog inspections at Sky FC's station, and had performed over 100 smog inspections off-site. Weaver informed respondent that Sky FC's station (at an address on Peach Court in San Jose) was the only approved testing location, and that if respondent wished to have another testing location approved by the Bureau, he must submit a change of address.

19. Weaver performed a follow-up QA inspection at Sky FC on May 21, 2025, and spoke with respondent. Weaver issued a Station Inspection Report documenting his findings from the inspection, and his discussions with respondent on that date and on May 13, 2025. During the inspection on May 21, 2025, Weaver noted deficiencies including: testing occurred in locations not approved by the Bureau; respondent did not have all required equipment for the OIS analyzer; and the BAR 97 did not pass calibration. He noted that another QA inspection would be required.

20. On July 24, 2025, Crozier and Weaver performed a follow-up inspection at Sky FC, to determine whether the OIS analyzer deficiencies had been corrected. When they arrived, they once again found that the station was closed with no technician present, but the VID reflected a smog inspection was in progress. The vehicle purportedly being tested (a 2017 Ram) was not present at the station. Crozier observed that the OIS analyzer, palm scanner, and DAD were missing from the OIS cabinet at Sky FC. He documented the missing equipment and contacted his supervisor, who instructed him to disable the OIS and DAD. Weaver spoke to respondent by telephone, and respondent confirmed he was not at Sky FC while the 2017 Ram was inspected. Weaver informed respondent the OIS and DAD were being disabled. Crozier completed a Station Inspection Report.

21. On August 8, 2025, respondent came to the Bureau's San Jose Field Office to discuss the July 24 station inspection, and spoke with Weaver. Respondent requested and was provided with a Vietnamese interpreter for this conversation. Weaver provided respondent with copies of the Station Inspection Reports, and respondent stated that he understood these reports in English. Respondent stated he understood the Smog Check Manual and the applicable laws and regulations in English, and also stated he sometimes used Google Translate.

Weaver asked respondent about his previous statements that most of his smog testing was performed off-site (Factual Finding 18), and respondent confirmed these admissions. Weaver asked if respondent wished to provide a change of address and respondent stated he could not afford to do so, and would start doing all inspections at Sky FC's approved Peach Court location. Weaver again told respondent that smog inspections may only be performed at the approved location.

Weaver asked respondent about the smog inspections he performed on July 24, 2025, and respondent admitted performing four or five mobile inspections at different locations. Respondent stated it took him about 15 minutes to remove the analyzer and equipment to set up for an off-site inspection. Weaver asked where respondent had performed the smog inspection for the 2017 Ram on July 24, 2025, which occurred while Weaver and Crozier were at the closed Sky FC station. Respondent stated he was in a grocery store parking lot about 15 minutes away, and that the customer paid an additional \$40 for the inspection (for a total of \$100). Weaver then showed respondent the test times from the Bureau's database, showing back-to-back smog inspections, and asked how respondent was able to do this. Respondent said that he input information and logged in to the biometric scanner while he was driving, with the devices connected to 12-volt power. Respondent stated that he would show Weaver his mobile set-up procedures, at an inspection at Sky FC.

At Sky FC on August 8, 2025, respondent had difficulty demonstrating his mobile set-up. Weaver used Google Translate during this interaction. After multiple attempts to provide information on the set-up, respondent admitted to Weaver that he had not been truthful in his statements earlier that day at the field office. Respondent stated that all of his smog inspections on July 24, 2025, were actually performed at respondent's home address. Respondent declined to provide further

information. Weaver issued a Station Inspection Report on August 8, 2025, a Vietnamese version of which was signed by respondent on August 14, 2025.

22. On August 13, 2025, Crozier and Weaver conducted a follow-up inspection at Sky FC. When they arrived, they observed a smog inspection in progress on a 1999 Mercedes Benz, which was positioned on the dynamometer with the BAR 97 sample probe inserted into the vehicle's tailpipe. The smog machine inductive tachometer pickup lead was connected to a small device on the front passenger seat of the vehicle. The BAR 97 showed that this inspection was being conducted using respondent's smog inspector license number, purportedly on a 1996 Toyota Tacoma with a different license plate, but that vehicle was not present at the station. Nor was respondent the technician performing the inspection on the Mercedes Benz. Weaver asked the technician to identify himself, and he got out of the vehicle and fled the premises.

23. On September 4, 2025, respondent came to the Bureau's San Jose Field Office to discuss the August 13 station inspection, and spoke with Weaver. Respondent was provided with a Vietnamese interpreter. Respondent admitted to Weaver that he had knowingly provided his access code to an unlicensed technician to perform illegal smog inspections on the BAR 97. Respondent was given a new access code. Respondent further admitted to Weaver that since Sky FC had been licensed as a smog check station, he had performed 400 to 500 illegal smog inspections via clean plugging. Respondent stated that he would receive a phone call from Steven Nguyen to inform him how many illegal smog inspections were requested. Then either Minh Dang Tran or Minh Tang Tran would arrive at Sky FC with a defeat device (a laptop with a cable to connect to the OIS). Respondent would log into the OIS using the biometric palm scanner, and then the other person would use the defeat device to

input information into the OIS analyzer, with no vehicle present. Respondent admitted that he received \$55 for each illegal smog inspection, and he knew these inspections were illegal.

Weaver issued a Station Inspection Report on September 4, 2025, to document respondent's statements. This report was translated into Vietnamese by Google Translate and the translation was verified by the interpreter. Respondent signed the Vietnamese version of the Station Inspection Report, and also signed a separate declaration dated September 4, 2025, which was written in Vietnamese. At the hearing on this ISO Petition, an interpreter was present and translated the text of respondent's declaration, which confirmed respondent's admissions as described by Weaver.

## **Respondent's Evidence**

24. Respondent provided a declaration and other documents.

25. Respondent stated in his declaration that he denied any knowledge of or participation in clean plugging or other fraudulent smog inspection activity. Respondent also denied accepting additional payments other than the stated charged price for an inspection. Respondent denied owning or possessing a defeat device.

26. Respondent stated there was no financial incentive to his station passing a vehicle, and that suspension of his license would cause him financial hardship.

27. Respondent stated he has instituted a new audit policy including using a "scan tool" prior to performing a smog inspection, to ensure that the DAD is being plugged into the vehicle's computer rather than a defeat device.

28. Respondent's earlier statements and declaration to Bureau representatives were closer in time, more detailed, consistent with the on-site

observations of Weaver and Crozier, and in most instances confirmed by an interpreter, and were more credible than respondent's self-serving declaration provided in this petition proceeding.

## **LEGAL CONCLUSIONS**

### **Statutory Authority**

1. An administrative law judge may issue an interim order suspending or restricting a license, if affidavits in support of the petition demonstrate that: (1) the licensee has engaged in acts or omissions constituting violations of the Business and Professions Code or has been convicted of a crime substantially related to the licensed activity; and (2) permitting the licensee to continue to engage in licensed activity would endanger the public health, safety, or welfare. (Bus. & Prof. Code, § 494, subd. (a).) Both prongs must be established to issue an interim suspension order in this abbreviated proceeding. The standard of proof to obtain an interim suspension order is a preponderance of the evidence. (Bus. & Prof. Code, § 494, subd. (e).)

2. An interim suspension order is of limited duration, remaining in effect only as long as the licensing board follows strict requirements to provide the licensee a full hearing on the charges on an expedited basis. Under Business and Professions Code section 494, subdivision (f), following issuance of an interim order, the Bureau must file an accusation within 15 days. If the licensee files a notice of defense, a hearing must be held within 30 days and a decision issued within 30 days of the submission of the matter.

3. Health and Safety Code section 44072.10, subdivision (a), authorizes issuance of a temporary suspension order lasting up to 60 days, pending a hearing

under the Administrative Procedure Act, suspending a smog check station or technician's license if the department determines that the licensee's conduct would endanger the public health, safety, or welfare before the matter can be heard, based upon "reasonable evidence" of fraud, tampering, intentional or willful violation of the Motor Vehicle Inspection Program, or a pattern or regular practice of such violations. The term "reasonable evidence" is not defined in the statute.

### **Causes for Interim Suspension**

4. This petition alleges five causes for an ISO based on clean plugging allegations. The first through third causes are brought against respondent's ARD registration, for violations of the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.). The fourth and fifth causes are brought against respondent's smog check station license and smog check inspector license, for violations of the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.).

#### **CAUSES ONE, TWO, AND THREE: ARD REGISTRATION**

5. Business and Professions Code section 9884.7, subdivision (a)(1), authorizes license discipline for an automotive repair dealer who makes or authorizes any untrue or misleading statement that is known, or should by the exercise of reasonable care be known, to be untrue or misleading. The test data reviewed by Weaver, along with respondent's admissions of false statements and clean plugging activity and the observations of Weaver and Crozier (Factual Findings 14-23), establish violations of this section.

6. Business and Professions Code section 9884.7, subdivision (a)(4), authorizes license discipline for an automotive repair dealer who engages in conduct that constitutes fraud. The test data reviewed by Weaver, along with respondent's

multiple admissions of fraudulent clean plugging activity and the observations of Weaver and Crozier (Factual Findings 14-23), establish violations of this section.

7. Business and Professions Code section 9884.7, subdivision (a)(6), authorizes license discipline for an automotive repair dealer who fails in any material respect to comply with the provisions of the Automotive Repair Act and its implementing regulations. California Code of Regulations, title 16, section 3373, provides that an automotive repair dealer shall not create false or misleading records. The test data reviewed by Weaver, along with respondent's admissions of false records and clean plugging activity and the observations of Weaver and Crozier (Factual Findings 14-23), establish violations of this section.

#### **CAUSES FOUR AND FIVE: SMOG LICENSES**

8. Health and Safety Code section 44072.2, subdivision (d), authorizes discipline of smog licenses if the licensee commits acts involving dishonesty, fraud, or deceit whereby another was injured. The test data reviewed by Weaver, along with the observations of Weaver and Crozier and respondent's multiple admissions of fraudulent clean plugging activity that deprived the public of the protections of the Motor Vehicle Inspection Program (Factual Findings 14-23), establish violations of this section.

9. Health and Safety Code section 44072.2, subdivisions (a) and (c), authorize discipline of smog licenses if the licensee violates the provisions of the Motor Vehicle Inspection Program and its implementing regulations. The test data reviewed by Weaver, along with respondent's admissions of false records and clean plugging activity and the observations of Weaver and Crozier (Factual Findings 14-23), establish violations of this section. Specifically, respondent: failed to ensure that smog

inspections were performed in accordance with prescribed procedures (Health & Saf. Code, § 44012); inspected vehicles outside of the Bureau-approved location (Cal. Code Regs., tit. 16, § 3340.15, subd. (a)); falsely or fraudulently issued certificates of compliance to vehicles without performing bona fide inspections (*id.*, § 3340.24, subd. (c)); failed to inspect vehicles in accordance with prescribed procedures and the Smog Check Manual (*id.*, § 3340.30, subd. (a)); entered false information about vehicles into the OIS (*id.*, § 3340.41, subd. (c)); had electronic simulation devices or software in the approved testing area of the station (*id.*, § 3340.41, subd. (h)); failed to conduct the required smog test inspections in accordance with the Bureau's specifications (*id.*, § 3340.42); violated Smog Check Manual procedures by entering identification information for vehicles not being tested (*id.*, § 3340.45); and willfully made false statements on smog certificates of compliance and vehicle inspection reports (Health & Saf. Code, § 44059).

## **Determination on Petition**

10. On the record provided in this ISO petition, the evidence is sufficient to establish fraudulent clean plugging activity and other acts constituting violations of the Automotive Repair Act and the Motor Vehicle Inspection Program, and to establish that allowing respondent's continued licensed practice pending a regularly noticed hearing on an accusation would endanger the public health, safety, or welfare. Cause exists for an interim suspension order against respondent's ARD registration under Business and Professions Code section 494, subdivision (a).

11. The evidence is also sufficient to establish fraud, intentional or willful violation of the Motor Vehicle Inspection Program, and a pattern or regular practice of such violations, and to establish that allowing respondent's continued licensed practice pending a regularly noticed hearing on an accusation would endanger the

public health, safety, or welfare. Cause exists for an interim suspension order against respondent's smog check, test only, station license and smog check inspector license under Health and Safety Code section 44072.10, subdivision (a).

12. Given respondent's admissions that he performed hundreds of illegal smog inspections in the few short months his smog check station was licensed, a complete interim suspension of respondent's ARD registration and smog licenses is required for public protection. Accordingly, the petition will be granted.

### **ORDER**

The petition for an interim suspension order is granted. Automotive Repair Dealer Registration Number ARD 311340 and Smog Check, Test Only, Station License Number TC 311340, both issued to respondent Tuat Xuan Pham, doing business as Sky FC; and Smog Check Inspector License Number EO 644755 issued to respondent Tuat Xuan Pham, are suspended. This order will remain in effect pending further license discipline proceedings, in accordance with Business and Professions Code section 494, subdivision (f).

DATE: 01/21/2026



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings