

DEPARTMENT OF CONSUMER AFFAIRS

**BAR**

Bureau of Automotive Repair

# **GUIDELINES FOR DISCIPLINARY ORDERS AND TERMS OF PROBATION**

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California Department of Consumer Affairs

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## **INTRODUCTION**

The Bureau of Automotive Repair (BAR or Bureau), in keeping with its mandate to protect the public, has adopted these recommended uniform guidelines in order to promote consistency in disciplinary orders for similar offenses on a statewide basis. This document is intended for use by those involved in the administrative disciplinary process (e.g., Administrative Law Judges (ALJ), Deputy Attorneys General (DAG), BAR licensees and their legal counsel, and other interested parties).

BAR requests that the suggested disciplinary orders contained in these guidelines be levied consistently and appropriately, based on the nature and seriousness of the violation(s) confirmed in an administrative action. BAR recognizes that mitigating or aggravating circumstances, in addition to other factors, may necessitate departure from these recommended orders and terms of probation. However, BAR requests that the ALJ include an explanation for departure from these guidelines in the proposed decision so that the circumstances can be better understood and evaluated by BAR before final action is taken.

Additionally, these guidelines only apply to formal administrative disciplinary processes. These guidelines do not apply to other alternatives available to BAR, such as administrative citations and fines, except in cases where an Accusation has been filed against a registrant or licensee for failure to pay an assessed administrative fine and/or comply with an order of abatement issued by BAR.

## **I. PROPOSED DECISIONS**

BAR requests that proposed decisions resulting from administrative hearings include the following:

- a. Specific code section(s) violated.
- b. Clear description of the violation(s).
- c. The respondent's explanation of the violation if the respondent is present at the hearing and testifies.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate. (See Chapter II below)
- e. If suspension or probation is ordered, the terms and conditions of probation shall be within the recommended guidelines for the offense committed unless the reason for departure from the recommended terms and conditions is clearly set forth in the findings and supported by the evidence.
- f. Reimbursement to BAR for its reasonable costs of investigation and enforcement, as determined by the ALJ hearing the matter, pursuant to Section 125.3 of the Business and Professions Code (BPC).

## **II. FACTORS IN AGGRAVATION AND IN MITIGATION**

In determining the level of discipline to be imposed in a given case, applicable factors such as the following should be considered:

### **Factors in Aggravation**

1. Prior warnings from BAR.
2. Prior Office Conference(s) with BAR.
3. Prior history of citations.
4. Prior history of formal disciplinary action.
5. Failure to permit BAR inspection of records.
6. Evidence of abuse of mechanic's lien.
7. Evidence of attempts to intimidate consumer.

8. Evidence of negligent or willful improper repair work that endangers consumers.
9. Evidence that the unlawful act was of a pattern of practice.
10. Failure to comply with BAR request for corrective action/retraining.
11. Currently on probation for improper acts.
12. Failure to successfully complete prior probation.
13. Failure to pay court judgment to victim.
14. Violation of previous court order.
15. Evidence of any other conduct which constitutes fraud or gross negligence.

### **Factors in Mitigation**

1. Evidence that the respondent implemented BAR's suggested resolution to a consumer complaint.
2. Evidence of restitution to the consumer and/or correct repair of the consumer's vehicle.
3. Evidence of voluntary participation in retraining for self or employees.
4. Evidence of voluntary purchase of proper diagnostic equipment and manuals.
5. Evidence of a medical condition that temporarily prevented respondent from exercising supervision and control over employees or others at the time of the violation.
6. Absence of prior disciplinary action.
7. Evidence that the violation was not part of a pattern or practice.
8. Evidence of no loss to consumer and no damage to consumer's property. (Undercover vehicles are viewed the same as consumer property.)

9. Evidence of retraining and has initiated steps to minimize recurrence.
10. Evidence of resolution of all consumer complaints with a subsequent change in business practice.
11. Evidence of substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of recurrence of the violation.
12. Evidence of any other conduct which would constitute a factor in mitigation.

The absence of any new allegations or amendments to the Accusation as originally filed, during the period between the filing of the Accusation or Statement of Issues and the date the matter comes to hearing, in itself, shall not be regarded as evidence of mitigation.

No single factor or combination of the above factors is required to justify either the minimum or maximum disciplinary order as opposed to an intermediate one.

### **III. DISCIPLINARY ORDER GUIDELINES**

The recommended orders and applicable optional terms and conditions of probation outlined in this section for violations of the BPC, Health and Safety Code (HSC), and California Code of Regulations (CCR) are reflected in the Disciplinary Order Guidelines Tables A, B and C, respectively. The individual violations within those code tables are listed in ascending numerical order. The sections of law providing the appropriate authority and grounds for discipline should be consulted to determine the relevance of a violation to the license or registration subject to discipline. The recommended orders will always include an order for recovery of BAR's reasonable costs of investigation and enforcement.

The maximum order for each individual violation is revocation of the applicable registration or license along with an order for recovery of BAR's reasonable costs of investigation and enforcement. Multiple violations or multiple instances of the same violations should be taken into consideration when determining orders.

Because BAR reserves the filing of a petition for Interim Suspension Order (ISO) for the most egregious of cases, the only recommended order for this action would be invalidation and revocation of all registrations and licenses. Therefore, in such egregious cases the following recommended discipline guidelines need not be consulted.

**Table A**

Business and Professions Code Disciplinary Order Guidelines

| <b>BUSINESS AND PROFESSIONS CODE</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|--------------------------------------|---|--|--|
| § 125.9(b)(5)                        | Failure of licensee to pay fine   | 3 years probation  | <b>1, 3c</b>   |
| § 490                                | Criminal conviction substantially related to the qualifications, functions, or duties of a licensee | 5 years probation  | <b>1, 3c</b>   |
| § 496                                | Violation of Section 123 pertaining to subversion of licensing examinations                         | 5 years probation  | <b>1, 3c</b>   |
| § 498                                | License secured by fraud, deceit, or misrepresentation  | 5 years probation  | <b>1, 3c</b>   |
| § 499                                | False information pertaining to another person's application for licensure                          | 3 years probation  | <b>1, 3c</b>   |
| § 9884.6                             | Unlicensed activity, automotive repair dealer   | 5 years probation  | <b>1, 2, 3c</b>  |
| § 9884.7(a)(1)                       | Making or authorizing any false or misleading statement   | 3 years probation  | <b>1, 2, 3b, 3c</b>  |
| § 9884.7(a)(2)                       | Causing/allowing a customer to sign an incomplete work order  | 2 years probation  | <b>1, 2, 3b, 3c</b>  |
| § 9884.7(a)(3)                       | Failure/refusal to give customer copy of document when signed                                       | 2 years probation  | <b>1, 2, 3b, 3c</b>  |
| § 9884.7(a)(4)                       | Conduct constituting fraud  | 5 years probation  | <b>1, 2, 3c, 7</b>   |
| § 9884.7(a)(5)                       | Conduct constituting gross negligence   | 5 years probation  | <b>1, 2, 3c, 7</b>   |
| § 9884.7(a)(6)                       | Failure to comply with Automotive Repair Act or regulations   | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 9884.7(a)(7)                       | Willful departure/disregard of accepted trade standards   | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 9884.7(a)(8)                       | Making false promises to influence customer   | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |



| <b>BUSINESS AND PROFESSIONS CODE</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|--------------------------------------|---|--|--|
| § 9884.7(a)(9)                       | Subletting repair work without customer's knowledge/consent   | 3 years probation  | 1, 2, 3b, 3c, 7  |
| § 9884.7(a)(10)                      | Conviction of a violation of Penal Code § 551   | 5 years probation  | 1, 2, 3c, 7  |
| § 9884.8                             | Failure to use a proper invoice   | 3 years probation  | 1, 2, 3b, 3c, 7  |
| § 9884.9                             | Failure to provide a written estimate   | 3 years probation  | 1, 2, 3b, 3c, 7  |
| § 9884.10                            | Failure to return replaced parts when requested   | 2 years probation  | 1, 2, 3b, 3c, 7  |
| § 9884.11                            | Failure to retain records   | 3 years probation  | 1, 2, 3b, 3c, 7  |
| § 9888.3                             | Unlicensed activity, lamp or brake adjusting station  | 5 years probation  | 1, 2, 3c, 7  |
| § 9889.3(a)                          | Violation of any section of the Business and Professions Code relating to the license               | 2 years probation  | 1, 2, 3c, 7  |
| § 9889.3(b)                          | Criminal conviction substantially related to the qualifications, functions, or duties of a licensee | 5 years probation  | 1, 2, 3c, 7  |
| § 9889.3(c)                          | Violation of Director's regulations   | 2 years probation  | 1, 2, 3c, 7  |
| § 9889.3(d)                          | Acts involving dishonesty, fraud, or deceit whereby another is injured                              | 5 years probation  | 1, 2, 3c, 7  |
| § 9889.3(e)                          | Misrepresentation of a material fact in obtaining a license   | 3 years probation  | 1, 2, 3c, 7  |
| § 9889.3(f)                          | Aids or abets an unlicensed person  | 5 years probation  | 1, 2, 3c, 7  |
| § 9889.3(g)                          | Failure to retain records   | 3 years probation  | 1, 2, 3c, 7  |
| § 9889.3(h)                          | Violates or attempts to violate laws pertaining to particular activity of license                   | 2 years probation  | 1, 2, 3c, 7  |
| § 9889.3(i)                          | Conviction of a violation of Penal Code § 551   | 5 years probation  | 1, 2, 3c, 7  |
| § 9889.16                            | Failure to issue lamp or brake adjustment certificate upon request                                  | 3 years probation  | 1, 2, 3c, 7  |

| <b>BUSINESS AND PROFESSIONS CODE</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|--------------------------------------|---|--|--|
| § 9889.19                            | Failure to charge appropriate fee for lamp and brake adjustment certificate | 5 years probation  | 1, 2, 3c, 7  |
| § 17500                              | False or misleading statements generally                                    | 5 years probation  | 1, 2, 3c, 7  |

**Table B**

Health and Safety Code Disciplinary Order Guidelines

| <b>HEALTH AND SAFETY CODE</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|-------------------------------|---|--|--|
| § 44011.3                     | Failure to comply with requirements for complete and partial pretest                                  | 2 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44012                       | Failure to comply with procedures for required testing at Smog Check station                          | 5 years probation  | 1, 2, 3a, 3c, 4, 5a, 6, 7                                    |
| § 44014                       | Test and repair conducted by unqualified/unlicensed technician/station                                | 5 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44014.4                     | Failure to comply with advertisement restrictions   | 3 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44014.5                     | Repairs performed at a test-only station  | 3 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44015                       | Improper issuance of certificate of compliance  | 5 years probation  | 1, 2, 3a, 3c, 4, 6, 7  |
| § 44015.5                     | Improper issuance of certificate of compliance or certificate of noncompliance to a new motor vehicle | 5 years probation  | 1, 2, 3a, 3c, 4, 6, 7  |
| § 44016                       | Failure to perform repairs in accordance with established specifications and procedures               | 5 years probation  | 1, 2, 3a, 3c, 4, 6, 7  |
| § 44017                       | Failure to comply with repair cost limits   | 5 years probation  | 1, 2, 3a, 3c, 7  |
| § 44017.3                     | Failure to post required information at Smog Check station  | 2 years probation  | 1, 2, 3a, 3c, 7  |

| <b>HEALTH AND SAFETY CODE</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|-------------------------------|---|--|--|
| § 44017.4                     | Failure to properly inspect specially constructed vehicles                                      | 5 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44030(a)                    | Allowing unqualified Smog Check mechanic to perform Smog Check tests, services, and adjustments | 5 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44031.5                     | Test and repair by unqualified Smog Check technician  | 5 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44032                       | Performance of test and repair by unqualified technician  | 5 years probation  | 1, 2, 3a, 3c, 4, 6, 7  |
| § 44033(a)                    | Failure to display identifying sign   | 2 years probation  | 1, 2, 3a, 3c, 7  |
| § 44033(b)                    | Requiring repairs as a condition of performing a test   | 3 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44033(c)                    | Failure to provide written estimate or repair choice statement                                  | 3 years probation  | 1, 2, 3a, 3b, 3c, 7  |
| § 44033(d)                    | Failure to separately state charges for testing and repairs                                     | 3 years probation  | 1, 2, 3a, 3b, 3c, 7  |
| § 44033(e)                    | Failure to post station and technician licenses   | 3 years probation  | 1, 2, 3a, 3c, 7  |
| § 44035                       | Failure to provide access to licensed station   | 3 years probation  | 1, 2, 3a, 3c, 7  |
| § 44036(b)(1)                 | Failure to utilize certified original equipment and replacement EIS parts                       | 3 years probation  | 1, 2, 3a, 3c, 7  |
| § 44050(e)                    | Failure to comply with an order of abatement or payment of an administrative fine               | 3 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44060(g)                    | Charging more for certificate than amount charged by the department                             | 5 years probation  | 1, 2, 3a, 3b, 3c, 7  |
| § 44072.2(a)                  | Violation of the chapter and regulations  | 2 years probation  | 1, 2, 3a, 3c, 4, 7   |

| <b>HEALTH AND SAFETY CODE</b> | <b>VIOLATION DESCRIPTION</b>   | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|-------------------------------|--|--|--|
| § 44072.2(b)                  | Conviction of a substantially related crime  | 5 years probation  | 1, 2, 3a, 3c, 4, 7   |
| § 44072.2(c)                  | Violation of regulations adopted by the Director   | 2 years probation  | 1, 2, 3a, 3c, 7  |
| § 44072.2(d)                  | Committed any act involving dishonesty, fraud, or deceit                                       | 5 years probation  | 1, 2, 3a, 3c, 7  |
| § 44072.2(e)                  | Misrepresentation of a material fact in obtaining a license                                    | 3 years probation  | 1, 2, 3a, 3c, 7  |
| § 44072.2(f)                  | Aiding or abetting an unlicensed person  | 5 years probation  | 1, 2, 3a, 3c, 7  |
| § 44072.2(g)                  | Failure to make, keep, or have available for inspection, records of transactions as a licensee | 3 years probation  | 1, 2, 3a, 3c, 7  |
| § 44072.2(h)                  | Violates or attempts to violate the chapter  | 2 years probation  | 1, 2, 3a, 3c, 7  |
| § 44072.10(c)                 | Fraudulent certification /inspection of vehicle  | Invalidation/Revocation of applicable registration/license   | 2  |

**Table C**

California Code of Regulations Disciplinary Order Guidelines

| <b>CALIFORNIA CODE OF REGULATIONS</b> | <b>VIOLATION DESCRIPTION</b>                                       | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|---------------------------------------|--|--|--|
| § 3303.3                              | Failure to have correct mailing or street address on file with BAR | 2 years probation  | 1, 2, 3c   |
| § 3305                                | Failure to comply with lamp and brake adjusting standards          | 3 years probation  | 1, 2, 3c, 4, 7   |

| <b>CALIFORNIA CODE OF REGULATIONS</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|---------------------------------------|---|--|--|
| § 3307(a)                             | Failure to appropriately display official station license   | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3307(b)                             | Failure to appropriately display licenses of all official adjusters employed at station                                     | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3307(c)                             | Failure to appropriately display official station sign  | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3307(d)                             | Failure to post list of prices  | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3307(e)                             | Failure to maintain adjusting, servicing, and testing instruments, machines, devices, and equipment                         | 5 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3307(f)                             | Failure to make, keep, or have available for inspection, records of transactions as a licensee                              | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3308(a)                             | Failure to remove/cover official station sign when services of a licensed adjuster are no longer available                  | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3308(b)                             | Failure to remove/cover official station sign when station is no longer authorized to perform functions of licensed station | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3308(c)                             | Failure to return unused certificates when station license has expired or has been surrendered, suspended, or revoked       | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3309                                | Failure to post official station sign   | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3316                                | Failure to meet official lamp adjusting station requirements  | 3 years probation  | <b>1, 2, 3c, 7</b>   |

| <b>CALIFORNIA CODE OF REGULATIONS</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|---------------------------------------|---|--|--|
| § 3321                                | Failure to meet official brake adjusting station operation and equipment requirements   | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.15(a)                          | Failure of Smog Check station to comply with work area requirement  | 3 years probation  | <b>1, 2, 3c, 6, 7</b>  |
| § 3340.15(b)                          | Failure of Smog Check station to have Smog Check technician present during hours of operation; testing/repair performed by technician | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.15(c)                          | Failure of Smog Check station to post station license and technician licenses   | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.15(d)                          | Failure of Smog Check station to post list of prices  | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.15(e)                          | Failure of Smog Check station to make, keep, or have available for inspection, records of transactions                                | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3340.15(f)                          | Failure of Smog Check station to be open and available to the general public for Smog Check Program services                          | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.15(g)                          | Failure of Smog Check station to provide access to BAR for quality assurance evaluation   | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.15(h)                          | Subletting Inspections or Repairs Required as part of the Smog Check Program  | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.16                             | Failure to comply with Smog Check test-only station requirements  | 3 years probation  | <b>1, 2, 3c, 5a, 6, 7</b>                                    |
| § 3340.16.4                           | Failure to comply with Smog Check repair-only station requirements  | 3 years probation  | <b>1, 2, 3c, 7</b>   |

| <b>CALIFORNIA CODE OF REGULATIONS</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|---------------------------------------|---|--|--|
| § 3341.16.5                           | Failure to comply with Smog Check test-and-repair station requirements  | 3 years probation  | <b>1, 2, 3c, 5a, 6, 7</b>                                    |
| § 3340.17                             | Failure to comply with test equipment, electronic transmission, maintenance, and calibration requirements                     | 3 years probation  | <b>1, 2, 3c, 5a, 6, 7</b>                                    |
| § 3340.22                             | Failure to display appropriate Smog Check station sign  | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.22.1                           | Failure to display appropriate Smog Check station service sign  | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.23(a)                          | Failure to remove/cover official Smog Check station sign when services of a licensed technician are no longer available       | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.23(b)                          | Failure to remove/cover official Smog Check station sign when station is no longer authorized to perform functions of station | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.23(c)                          | Failure to return unused certificates when station license has expired or has been surrendered, suspended, or revoked         | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.30(a)                          | Failure of Smog Check technician to comply with inspection, testing, and repair requirements                                  | 5 years probation  | <b>1, 2, 3c, 4, 6, 7</b>                                     |
| § 3340.30(b)                          | Failure of licensed technician to maintain correct mailing address on file with BAR   | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.30(c)                          | Failure of licensed technician to notify BAR of change of employment  | 2 years probation  | <b>1, 2, 3c, 4, 7</b>  |

| <b>CALIFORNIA CODE OF REGULATIONS</b> | <b>VIOLATION DESCRIPTION</b>   | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|---------------------------------------|--|--|--|
| § 3340.30(d)                          | Failure of licensed technician whose license has expired to cease to inspect, test, or repair failed vehicles            | 3 years probation  | <b>1, 2, 3c, 4, 7</b>  |
| § 3340.35                             | Failure to comply with certificate of compliance and noncompliance requirements  | 5 years probation  | <b>1, 2, 3c, 6, 7</b>  |
| § 3340.41(a)                          | Failure to give customer a copy of test report   | 2 years probation  | <b>1, 2, 3b, 3c, 4, 7</b>                                    |
| § 3340.41(b)                          | Tampering with or entering false information into emissions inspection system  | 3 years probation  | <b>1, 2, 3c, 4, 6, 7</b>                                     |
| § 3340.41(c)                          | Entering information into the emissions inspection system for a vehicle other than the one being tested                  | 5 years probation  | <b>1, 2, 3c, 4, 6, 7</b>                                     |
| § 3340.41(d)                          | Failing to follow specifications and procedure for diagnosis and repair when vehicle fails Smog Check test               | 5 years probation  | <b>1, 2, 3c, 4, 7</b>  |
| § 3340.41(f)                          | Performing initial test, reinspection, or issue certificate of compliance to STAR directed vehicle at a non-STAR station | 5 years probation  | <b>1, 2, 3c, 4, 7</b>  |
| § 3340.41.3                           | Failure to comply with invoice requirements  | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3340.42                             | Failure to comply with Smog Check emissions test methods and standards   | 5 years probation  | <b>1, 2, 3c, 4, 6, 7</b>                                     |
| § 3340.42.2                           | Failure to comply with on-board diagnostic inspection test methods and standards   | 5 years probation  | <b>1, 2, 3c, 4, 6, 7</b>                                     |
| § 3340.45                             | Failure to comply with Smog Check Manual requirements and procedures   | 5 years probation  | <b>1, 2, 3c, 4, 6, 7</b>                                     |



| <b>CALIFORNIA CODE OF REGULATIONS</b> | <b>VIOLATION DESCRIPTION</b>  | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|---------------------------------------|---|--|--|
| § 3340.50(a)                          | Failure to Own and Operate Fleet of 10 Vehicles   | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.50(b)                          | Failure to Have Required Equipment  | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.50(c)                          | Failure to Have Licensed Smog Check Inspector or Technician Present When Necessary to Test, Inspect or Repair | 3 years probation  | <b>1, 2, 3c, 5a, 6, 7</b>                                    |
| § 3340.50(d)                          | Failure to comply with work area requirements   | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.50(e)                          | Testing, repairing, or certifying a non-fleet vehicle by a fleet facility                                     | 3 years probation  | <b>1, 2, 3c, 4, 7</b>  |
| § 3340.50(f)                          | Failure to facilitate onsite inspection   | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3340.50(g)                          | Failure to display station license and technician licenses  | 2 years probation  | <b>1, 2, 3c, 4, 7</b>  |
| § 3340.50(h)                          | Failure to Maintain Manuals and Bulletins Relating to Fleet Facilities  | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3351.3                              | Failure of automotive repair dealer to comply with display requirements                                       | 2 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3351.5                              | Failure of auto body repair shop to comply with equipment requirements  | 3 years probation  | <b>1, 2, 3c, 5b, 7</b>                                       |
| § 3351.6                              | Failure of automotive air conditioning repair dealers to comply with equipment requirements                   | 3 years probation  | <b>1, 2, 3c, 5c, 7</b>                                       |
| § 3353                                | Failure to comply with written estimate and authorization requirements  | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3355                                | Failure to comply with requirements for replaced parts that are not returnable                                | 2 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3356 (a) – (c)                      | Failure to comply with invoice requirements   | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |

| <b>CALIFORNIA CODE OF REGULATIONS</b> | <b>VIOLATION DESCRIPTION</b>   | <b>RECOMMENDED ORDER</b><br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | <b>APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION</b> |
|---------------------------------------|--|--|--|
| § 3356(d)                             | Failure to provide and retain legible copy of invoice  | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3356.1                              | Failure to comply with toxic waste disposal costs requirements   | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3358                                | Failure to comply with maintenance of records requirements   | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3359                                | Failure to comply with sublet disclosure requirement   | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3360.2                              | Failure to comply with general requirements for the sale and installation of ball joints                     | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3361.1                              | Failure to comply with minimum requirements and standards for automatic transmissions                        | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3362.1                              | Failure to comply with engine changes requirements   | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |
| § 3363.4                              | Failure to comply with installation standards applicable to ignition interlock devices                       | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3364                                | Defacing/removing vehicle identification information   | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3365                                | Failure to comply with auto body and frame repair standards  | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3366                                | Failure to comply with automotive air conditioning procedures  | 3 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3367                                | Improper installation, reinstallation, sale or distribution of previously deployed airbags                   | 5 years probation  | <b>1, 2, 3c, 7</b>   |
| § 3368                                | Improper receipt or payment of commissions, consideration, inducements, or referral fees for towing services | 3 years probation  | <b>1, 2, 3b, 3c, 7</b>                                       |

| CALIFORNIA CODE OF REGULATIONS | VIOLATION DESCRIPTION   | RECOMMENDED ORDER<br>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and... | APPLICABLE OPTIONAL TERMS AND CONDITIONS OF PROBATION |
|--------------------------------|---|---|---|
| § 3371                         | Untrue or misleading statements or advertising  | 3 years probation   | 1, 2, 3b, 3c, 7                                       |
| § 3372.1                       | Misleading price advertising by an automotive repair dealer                                 | 3 years probation   | 1, 2, 3c, 7   |
| § 3373                         | False or misleading records   | 3 years probation   | 1, 2, 3b, 3c, 7                                       |
| § 3374                         | Advertise, represent, or imply that a used part is new                                      | 3 years probation   | 1, 2, 3b, 3c, 7                                       |
| § 3375                         | Advertisement containing false or misleading information regarding guarantees or warranties | 3 years probation   | 1, 2, 3b, 3c, 7                                       |
| § 3376                         | Failure to comply with requirements for disclosure of guarantee                             | 3 years probation   | 1, 2, 3b, 3c, 7                                       |
| § 3377                         | False and misleading pro-rata guarantee   | 3 years probation   | 1, 2, 3b, 3c, 7                                       |
| § 3394.44(c)                   | Failure to timely comply with order of abatement or pay fine                                | 3 years probation   | 1, 2, 3c, 7   |

#### IV. MODEL DISCIPLINARY ORDERS

Model disciplinary orders and terms and conditions of probation have been developed to promote consistency in administrative disciplinary actions. The following language shall be used in every decision where the applicable order or condition is imposed.

##### Revocation

a). Statement of Issues:

IT IS HEREBY ORDERED that a/an [insert registration/license type] Registration/License will be issued to Respondent \_\_\_\_\_, and will immediately be revoked.

b). Accusation:

It is hereby ordered that [insert registration/license type]

Registration/License No. \_\_\_\_\_, issued to Respondent  
\_\_\_\_\_, is revoked.

### **Standard Stay Order**

However, the revocation is stayed and Respondent is placed on probation for \_\_\_ (\_\_) years on the following terms and conditions.

### **Cost Recovery**

Respondent shall pay to the Bureau its costs of investigation and enforcement in the amount of \$\_\_\_\_\_.

### **Terms and Conditions of Probation**

Terms and conditions of probation are divided into two categories. The first category consists of standard terms and conditions of probation that shall be included for all probations. The second category consists of optional terms and conditions of probation that are to be considered and imposed along with any other optional terms and conditions if the facts and circumstances of the case warrant. BAR recommends that in cases involving multiple violations, orders for suspension and/or other discipline run concurrently.

If suspension is ordered, BAR recommends that the number of days of actual suspension be based upon the facts and circumstances of the specific case and shall be no less than 3 days and no more than 30 days. BAR recommends that the suspension days be consecutive days in which the business would normally be open to the public, and that they begin on the effective date of the decision. When ordered as part of a probation order, suspension shall appear as the first term and condition of probation.

### **Standard Terms and Conditions of Probation**

Terms to be included in all orders of probation:

#### **1. Obey All Laws**

During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Respondent.

#### **2. Posting of Sign – (Applicable only when actual suspension of a registration or station license is ordered):**

During the period of suspension, Respondent shall prominently post a sign or signs, provided by BAR, indicating the beginning and ending dates of the

suspension and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall be approved by BAR and shall remain posted during the entire period of actual suspension.

### **3. Quarterly Reporting**

During the period of probation, Respondent shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, 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.

### **4. 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 BAR 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 Section 9884.6 of the Business and Professions Code.

### **5. Access to Examine Vehicles and Records**

Respondent shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

### **6. Tolling of Probation**

If, during probation, Respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Respondent shall notify BAR 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 Respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which Respondent is 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.

**7. 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 BAR'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.

**8. Maintain Valid License**

Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with BAR, including any period during which suspension or probation is tolled. If Respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by Respondent within 30 days of that date. If Respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal 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.

**9. Cost Recovery**

Respondent shall pay the Bureau of Automotive Repair \$ \_\_\_\_\_ for the reasonable costs of the investigation and enforcement of case No. \_\_\_\_\_. Respondent shall make such payment as follows: [Outline payment schedule or lump sum with due date.] Any agreement for a scheduled payment plan shall require full payment to be completed no later than six (6) months before probation terminates. Respondent 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 No. \_\_\_\_\_. 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. BAR 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.

**10. Completion of Probation**

Upon successful completion of probation, Respondent's affected registration and/or license 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 BAR.

**11. 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 request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate the 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 the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If Respondent applies to BAR for a registration or license at any time after that date, Respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

**Optional Terms and Conditions of Probation**

*Terms to be included in orders of probation based upon violations.*

**1. Actual Suspension**

[Insert registration/license type] Registration/License No. \_\_\_\_\_, issued to Respondent \_\_\_\_\_, is suspended for \_\_\_\_\_ (\_\_) consecutive days beginning on the effective date of the Decision and Order. [3-30 days recommended]

**2. Restitution** - (Applicable when a party has suffered a monetary loss related to proven violations):

Respondent shall pay \$\_\_\_\_\_ in restitution to \_\_\_\_\_ for \_\_\_\_\_, as alleged in the Accusation. Within \_\_\_ days of the effective date of this stipulation, Respondent shall deliver to the Bureau of Automotive Repair a certified check or cashier's check in the amount of \$\_\_\_\_\_ payable to \_\_\_\_\_ so the Bureau may distribute these restitution funds. Failure to complete payment of restitution within this time frame shall constitute a violation of probation.

### **3. Training Course**

a) *(Applicable to Smog Check technicians only):*

During the period of probation, Respondent shall attend and successfully complete a BAR-specified and -approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the Respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and Respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

b) *(Applicable to registrants):*

Within 60 days of the effective date of a decision, Respondent shall attend a Write It Right presentation provided by a Bureau Representative, at the location, date, and time determined by the Bureau.

c) *(Applicable to registrants and brake and lamp station and adjuster licensees)*

Within 180 days of the effective date of a decision, Respondent shall complete ordered coursework or training that is acceptable to BAR and relevant to the adjudicated violation. Respondent shall submit to BAR satisfactory evidence of completion of coursework or training within the timeline specified for completion of the ordered coursework or training.

### **4. Notification to Employer – *(Applicable to Smog Check technicians/inspectors, and lamp and brake adjusters only):***

When performing services that fall within the scope of his or her license, Respondent shall provide each of his or her current or future employers a copy of the decision and the underlying Accusation or Statement of Issues before commencing employment. Notification to Respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.



## 5. Prescribed Equipment

- a) *(Applicable to Smog Check Stations found to have violated Sections 3340.16, 3340.16.5, and/or 3340.17, of the CCR):*

During the period of probation, Respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until Respondent has purchased, installed, and maintained the diagnostic, inspection, and repair equipment prescribed by BAR and necessary to properly perform such work. Respondent shall give BAR at least 10 days' notice of the availability of the equipment for inspection by a BAR representative.

- b) *(Applicable to registrants found to have violated Section 3351.5 of the CCR):*

During the period of probation, Respondent shall not perform any form of auto body repair work or automotive painting, until Respondent has purchased, installed, and maintained the appropriate equipment prescribed by BAR and necessary to properly perform such work. Respondent shall give BAR at least 10 days' notice of the availability of the equipment for inspection by a BAR representative.

- c) *(Applicable to registrants found to have violated Section 3351.6, of the CCR):*

During the period of probation, Respondent shall not perform any form of automotive air conditioning service or repair, until Respondent has purchased, installed, and maintained the appropriate equipment prescribed by BAR and necessary to properly perform such work. Respondent shall give BAR at least 10 days' notice of the availability of the equipment for inspection by a BAR representative.

- 6. Restriction on inspection vehicles requiring a Smog Check certification at a STAR station** - *(Applicable to Smog Check Stations found to have violated Section 44012, 44015(a), 44015(b), 44015.5, 44016, or 44032 of the HSC, or Section 3340.15(a), 3340.16(a), 3340.16(b), 3340.16.5(a), 3340.16.5(b), 3340.17, 3340.30(a), 3340.35, 3340.41(b), 3340.41(c), 3340.42, 3340.42.2, or 3340.45 of the CCR):*

Respondent shall not be permitted to issue certificates of compliance for any vehicles requiring Smog Check certification at a STAR station for their biennial Smog Check pursuant to Section 44010.5 or 44014.7 under the Health and Safety Code.

**7. Supervision Requirements** - (*Required for probationary registrations/licenses, and applicable for other cases where owner absenteeism was a contributing factor to the violations*):

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. In the event that 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 BAR within ten (10) days of the medical affirmation of the condition.