

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

In the Matter of the Statement of Issues Against:

MARTIN HERNANDEZ JR.

Smog Check Inspector License No. EO Applicant

Respondent.

Case No. 79/21-7140

DECISION

The attached Stipulated Settlement and Disciplinary Order 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 become effective on August 16, 2022.

DATED: June 22, 2022



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

1 ROB BONTA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
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Attorneys for Complainant
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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Statement of Issues
14 Against:

Case No. 79/21-7140

15 **MARTIN HERNANDEZ JR.**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **Smog Check Inspector License Applicant**

17 Respondent.
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20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair
24 (Bureau). He brought this action solely in his official capacity and is represented in this matter by
25 Rob Bonta, Attorney General of the State of California, by William D. Gardner, Deputy Attorney
26 General.

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2. Respondent Martin Hernandez Jr. (Respondent) is represented in this proceeding by attorney William D. Ferreira, whose address is: 580 California Street, Suite 1200 San Francisco, CA 94104-1071.

3. On or about May 17, 2021, Respondent filed an application dated May 11, 2021, with the Bureau to obtain a Smog Check Inspector License. The Bureau denied the application on June 27, 2021.

JURISDICTION

4. Statement of Issues No. 79/21-7140 was filed before the Director of the Department of Consumer Affairs (Director), and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on December 23, 2021.

5. A copy of Statement of Issues No. 79/21-7140 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 79/21-7140. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Statement of
3 Issues No. 79/21-7140, if proven at a hearing, constitute cause for denying his application for a
4 Smog Check Inspector License.

5 10. For the purpose of resolving the Statement of Issues without the expense and
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in the Statement of Issues, and that Respondent hereby
8 gives up his right to contest those charges.

9 11. Respondent agrees that his Smog Check Inspector License is subject to denial and he
10 agrees to be bound by the Director's probationary terms as set forth in the Disciplinary Order
11 below.

12 CONTINGENCY

13 12. This stipulation shall be subject to approval by the Director or the Director's designee.
14 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of
15 Automotive Repair may communicate directly with the Director and staff of the Department of
16 Consumer Affairs regarding this stipulation and settlement, without notice to or participation by
17 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
18 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director
19 considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and
20 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
21 this paragraph, it shall be inadmissible in any legal action between the parties, and the Director
22 shall not be disqualified from further action by having considered this matter.

23 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
24 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
25 signatures thereto, shall have the same force and effect as the originals.

26 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Director may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that, upon successfully passing the Smog Check Inspector
9 Licensing Examination, a Smog Check Inspector License will be issued to Respondent Martin
10 Hernandez (Respondent) and immediately revoked. However, the revocation will be stayed and,
11 upon issuance of the license, Respondent will be placed on probation four (4) years and subject to
12 the following terms and conditions:

13 1. **Obey All Laws.** During the period of probation, Respondent shall comply with all
14 federal and state statutes, regulations and rules governing all BAR registrations and licenses held
15 by Respondent.

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

20 3. **Report Financial Interests.** Respondent shall, within 30 days of the effective date
21 of the decision and within 30 days from the date of any request by BAR during the period of
22 probation, report any financial interest which any Respondent or any partners, officers, or owners
23 of any Respondent facility may have in any other business required to be registered pursuant to
24 Section 9884.6 of the Business and Professions Code.

25 4. **Access to Examine Vehicles and Records.** Respondent shall provide BAR
26 representatives unrestricted access to examine all vehicles (including parts) undergoing service,
27 inspection, or repairs, up to and including the point of completion. Respondent shall also provide
28 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

1 **5. Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of
2 California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction
3 of California, Respondent shall notify BAR in writing within 10 days of the dates of departure
4 and return, and of the dates of cessation and resumption of business in California. All provisions
5 of probation other than cost reimbursement requirements, restitution requirements, training
6 requirements, and that Respondent obey all laws, shall be held in abeyance during any period of
7 time of 30 days or more in which Respondent is not residing or engaging in business within the
8 jurisdiction of California. All provisions of probation shall recommence on the effective date of
9 resumption of business in California. Any period of time of 30 days or more in which Respondent
10 is not residing or engaging in business within the jurisdiction of California shall not apply to the
11 reduction of this probationary period or to any period of actual suspension not previously
12 completed. Tolling is not available if business or work relevant to the probationary license or
13 registration is conducted or performed during the tolling period.

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

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

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8. **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.

9. **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.

ACCEPTANCE

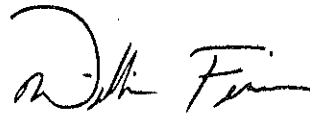
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William D. Ferreira. I understand the stipulation and the effect it will have on my Smog Check Inspector License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of the Department of Consumer Affairs.

DATED: MARCH 30 2022

MARTIN HERNANDEZ JR.
Respondent

1 I have read and fully discussed with Respondent Martin Hernandez Jr. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4 DATED: 3/30/22



5 WILLIAM D. FERREIRA
6 Attorney for Respondent

7 **ENDORSEMENT**

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Director of the Department of Consumer Affairs.

10 DATED: 4/6/2022

Respectfully submitted,

11 ROB BONTA
12 Attorney General of California
13 ARMANDO ZAMBRANO
14 Supervising Deputy Attorney General



15 WILLIAM D. GARDNER
16 Deputy Attorney General
17 Attorneys for Complainant

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