

DEPARTMENT OF CONSUMER AFFAIRS

**BAR**

Bureau of Automotive Repair

**GUIDELINES FOR  
DISCIPLINARY PENALTIES  
AND TERMS OF PROBATION**

DRAFT

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CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

**BUREAU OF AUTOMOTIVE REPAIR**

(916) 255-4300 *phone*

(916) 255-1369 *fax*

[bareditor@dca.ca.gov](mailto:bareditor@dca.ca.gov) *email*

[www.bar.ca.gov](http://www.bar.ca.gov)

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## ***INTRODUCTION***

The Bureau of Automotive Repair (BAR) is a licensing and regulatory agency within the Department of Consumer Affairs (DCA) whose primary mission is consumer protection. Protection of the public has been mandated as the highest priority of BAR in exercising its licensing, regulatory and disciplinary functions.<sup>1</sup> In keeping with its mandate, BAR has adopted these recommended uniform guidelines in order to promote consistency in disciplinary penalties for similar offenses on a statewide basis. This document is intended for use by those involved in the administrative disciplinary process (i.e., Administrative Law Judges (ALJ), Deputy Attorneys General, BAR licensees and their legal counsel, and other attorneys).

These guidelines include factors in aggravation and in mitigation and probationary terms. The guidelines for specific offenses are referenced to the applicable provisions of the Automotive Repair Act<sup>2</sup>, the Motor Vehicle Inspection Program laws<sup>3</sup>, and BAR regulations<sup>4</sup>. For purposes of this document, terms and conditions of probation are defined in two general categories, standard conditions and optional conditions. Standard conditions are those conditions of probation which will generally appear in all cases involving probation and optional conditions are those conditions which address the specific circumstances of the case. These guidelines are intended to foster uniformity of penalties, and to inform licensees of the potential consequences of violations of those provisions.

BAR expects the penalties imposed to be commensurate with the nature and seriousness of the violation(s) confirmed in an administrative action. BAR recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate departure. During a hearing, an ALJ has the discretion to depart from the disciplinary guidelines. However, BAR requires that the ALJ include an explanation in the proposed decision when there is a departure from the guidelines, so that the circumstances can be better understood and evaluated upon review and before final action is taken.

These penalty guidelines apply only to the formal administrative disciplinary processes and do not apply to other alternatives available to BAR, such as administrative citations and fines, except 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<sup>5</sup>.

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<sup>1</sup> [Business and Professions Code § 9880.3](#)

<sup>2</sup> [Chapter 20.3 \(commencing with section 9880\) of Division 3 of the Business and Professions Code.](#)

<sup>3</sup> [Chapter 5 \(commencing with section 44000\) or Part 5 of Division 26 of the Health and Safety Code.](#)

<sup>4</sup> [Title 16, Division 33, California Code of Regulations](#)

<sup>5</sup> [See Business and Professions Code § 125.9 and § 148 and Health and Safety Code § 44050, et seq.](#)

## ***I. GENERAL CONSIDERATIONS***

### **Accusations**

When violations of the Automotive Repair Act, Motor Vehicle Inspection Program laws, or BAR regulations are confirmed during an investigation, BAR submits the case to the Attorney General's Office for the preparation of an Accusation to be filed by BAR. BAR's emphasis is on disciplining (which includes suspensions and revocations) licensees and registrants who engage in abuse or willful misconduct in dealing with the public. All proceedings to suspend or revoke a license, or invalidate a registration, are conducted in accordance with the administrative adjudication provisions of the Administrative Procedure Act (APA).<sup>6</sup>

The withdrawal, expiration, suspension, cancellation, or forfeiture of a license or registration does not deprive BAR or the Director of Consumer Affairs (Director) of the jurisdiction to proceed with any investigation or disciplinary action pursuant to sections 118, 9884.13 and 9889.7 of the Business and Professions Code (B&P), and section 44002 of the Health and Safety Code (H&S).

### **Denials/Statement of Issues**

BAR will generally notify the applicant in writing of the license/application denial. The notice sets forth the legal grounds for denial of the application and the procedure for requesting a hearing to contest the denial. If the denial is based upon the authority in section 480 of the B&P, written notice of the denial of an application for a license or registration will include a statement of reasons for the denial as required by section 9884.22 of the B&P. The statement of reasons will do all of the following:

- (1) Evaluate evidence of rehabilitation submitted by the applicant, if any;
- (2) Provide the criteria for rehabilitation listed in section 3395 of Title 16 of the California Code of Regulations (CCR); and,
- (3) If the decision was based on the applicant's prior criminal conviction, justify the denial of a license or registration and convey the reasons why the prior criminal conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant.

If the applicant timely requests a hearing on the denial, BAR will file and serve a Statement of Issues in accordance with sections 9884.7 and 9884.12 of the B&P, and the APA.

### **Probationary Registrations**

Pursuant to section 9884.21 of the B&P, the Director may issue a probationary registration, subject to terms and conditions. Such conditions may include suspension or other terms as the director, in his or her sole discretion may deem proper. These probationary registrations may be offered by BAR, subject to review of factors including, but not limited to, the following:

- (1) The applicant must not have been convicted<sup>7</sup> of any crime substantially related<sup>8</sup> to the duties relevant to the registration or license applied for, with the exception of a sole conviction of licensing or registration requirement laws<sup>9</sup>, within the three (3) years preceding the date the application for registration or licensure is received.

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<sup>6</sup> [Chapter 5 \(commencing with section 11500\) of Part 1 of Division 3 of Title 2 of the Government Code.](#)

<sup>7</sup> [See Business and Professions Code § 7.5.](#)

<sup>8</sup> [See California Code of Regulations § 3395.2.](#)

<sup>9</sup> [See Business and Professions Code § 9884.6, 9887.1, and 9888.3, and Health and Safety Code § 44014\(a\) and 44032, and California Code of Regulations § 3308, 3310\(e\), 3340.30\(d\), and 3340.35\(d\).](#)

- (2) The applicant must not have been an owner, partner, corporate officer, limited liability company (LLC) member, or responsible managing employee of a business that has had a BAR-issued registration or license, of the same registration or license type being applied for, invalidated or revoked without stay, within the preceding three (3) years of the date the application for registration or licensure is received.
- (3) BAR will also consider the applicable factors in aggravation and mitigation, as published in the Guidelines for Disciplinary Penalties and Terms of Probation, in addition to all competent evidence of rehabilitation<sup>10</sup> provided by the applicant at the time of application, and any outstanding monetary penalties or ordered cost-recovery owed by the applicant to BAR at the time of application.

For the purposes of this section, when a probationary registration is being offered to an applicant BAR will do the following:

- (1) Notify the applicant that the application for an unrestricted registration is denied. Notification will be made, and the opportunity for hearing provided for, as required under section 485 of the B&P and the APA.
- (2) Provide the applicant an opportunity to modify his or her application, by accepting certain specified terms and conditions of a probationary registration.

The applicant, when offered a probationary registration, will have 60 days from the date of service of the notice of denial of an unrestricted registration to do either of the following:

- (1) Indicate their acceptance, in writing, of the probationary registration and all specified terms and conditions, or
- (2) Request a hearing on the denial of the application for an unrestricted registration.

If the applicant fails to accept the offer of a probationary registration, and does not request hearing on the denial of the application for an unrestricted registration within 60 days, the applicant's right to each will be deemed waived. When an applicant accepts the offer of a probationary registration within this timeframe, any previous or subsequent requests for hearing on the denial of the unrestricted registration will be considered withdrawn. Upon the BAR's receipt of written acceptance of the probationary registration, the registration will be issued with terms and conditions. The registration, for a period of up to three (3) years, will be subject to the standard terms and conditions of probation, as published in the Guidelines for Disciplinary Penalties and Terms of Probation, in addition to applicable optional terms and conditions as deemed appropriate by BAR, and accepted by the applicant. A probationary registration issued pursuant to this section will be treated just as any other probation, subject to the requirements and provisions published in the Guidelines for Disciplinary Penalties and Terms of Probation.

### **Proposed Decisions**

BAR requests that Proposed Decisions following administrative hearings include the following:

- a. Specific code section(s) violated with their definitions.
- b. Clear description of the violation(s).
- c. Respondent's explanation of the violation if he/she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate. (See Chapter II.)
- e. When suspension or probation is ordered, the terms and conditions of probation 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.

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<sup>10</sup> See [California Code of Regulations § 3395](#).

- f. Reimbursement to BAR of its reasonable costs of investigation and prosecution, as determined by the ALJ hearing the matter, pursuant to section 125.3 of the B&P.

If a respondent fails to appear, despite having been properly noticed, for his/her scheduled hearing or does not submit a notice of defense, pursuant to section 11506 of the Government Code, that failure to appear or inaction may result in the holding of the scheduled hearing without the respondent present or in a default decision revoking respondents license(s) or registration(s).

### **Stipulated Settlements**

BAR will consider proposals to enter into a stipulated settlement in order to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that to stipulate to settlement, he/she may be required to admit to violations in the accusation. In addition, it is BAR's policy that the Deputy Attorney General seek cost recovery on behalf of BAR in all settlement cases with respondents. In stipulated decisions involving revocation **without** a stay, the order shall include the requirement that respondent reimburse BAR for the reasonable costs of investigation and prosecution prior to reapplication for a new or reinstated license or registration. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo to the Director explaining the background of the case, the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.

### **Petition for Reinstatement / Reduction of Penalty**

A person whose license or registration has been revoked, invalidated, or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one (1) year has elapsed from the effective date of the decision or from the date of the denial of a similar petition<sup>11</sup>. Petitions for reinstatement or reduction of penalty shall be submitted to the Bureau in writing for review and consideration by the Director. In petitioning for reinstatement or reduction of penalty, the petitioner has the burden of demonstrating that he/she has the necessary skills and current qualifications to obtain the license in question. The Director is not interested in retrying the original revocation, invalidation, suspension or probationary status. The Director's primary concerns are the rehabilitation criteria identified in section 3395 of the CCR and the evidence presented by the petitioner of his/her rehabilitation as indicated in section 3395.1 of the CCR. In reaching a determination, the Director must consider, where applicable, the criteria for rehabilitation pursuant to section 3395 of the CCR.

The Director's petition decision is issued in writing and served by BAR on the petitioner, his/her counsel (if applicable), and the Office of the Attorney General. The Decision includes all of the following: (a) a summary of the offense(s) and the specific Codes violated that resulted in the revocation, suspension, or probation of the license or registration; (b) an evaluation of the evidence of rehabilitation submitted; and, (c) an explanation of how the factors in Section 3395 of the CCR were applied in reaching a decision to grant or deny the petition.

Should a petition for reinstatement or reduction of penalty case be referred to an ALJ, and the petitioner fails to appear at the administrative hearing, the proceeding shall go forward without the petitioner's presence and the ALJ shall issue a proposed decision based on the written evidence and oral presentations submitted.

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<sup>11</sup> [Government Code § 11522](#)

## **Violation of Probation**

Where any terms and conditions of a probation are violated and an accusation and/or petition to revoke probation is/are filed, the maximum penalty shall include an order vacating the previous stay order and re-imposing the penalty that was previously stayed; and/or an order of revocation, separately and severally, for violation of probation and/or for any additional offenses. The minimum penalty shall be an actual suspension and an extension of probation. The unpaid balance of the original order for reimbursement of BAR's costs of investigation and enforcement, if any, shall be reaffirmed and ordered in addition to the costs associated with the subsequent accusation and/or petition to revoke probation.

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

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

### ***Factors in Aggravation***

1. Prior education/warnings from BAR.
2. Prior Office Conference(s) with BAR.
3. Prior violation of accepted trade standards.
4. Prior history of citations.
5. Prior history of formal disciplinary action.
6. Failure to permit BAR inspection of records.
7. Abuse of mechanic's lien.
8. Attempts to intimidate consumer.
9. Negligent or willful improper repair work that endangers consumer.
10. Evidence that the unlawful act was part of a pattern of practice
11. Failure to comply with BAR request for corrective action/retraining.
12. Currently on probation for improper acts.
13. Failure to successfully complete prior probation.
14. Failure to pay court judgment to victim.
15. Violation of previous court order.
16. Any other conduct which constitutes fraud or gross negligence.
17. Commits any acts of dishonesty.

### ***Factors in Mitigation***

1. Evidence that respondent accepted BAR's suggested resolution to consumer complaint.
2. Evidence that the respondent has made restitution to the consumer and/or has correctly repaired 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 medical condition that temporarily prevented respondent from exercising supervision and control over employees or others, which led to wrongdoing.
6. Absence of prior disciplinary action.
7. No evidence that the unlawful act was 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 that the respondent has taken specific steps for retraining and has initiated steps to minimize recurrence.
10. Evidence of resolution of all consumer complaints with a subsequent relevant change in business practice.
11. Evidence that the respondent has voluntarily taken substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of reoccurrence of the unlawful acts.

**The absence of any new allegations or amendments to the accusation as originally filed, during the period between the filing of the accusation 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 penalty as opposed to an intermediate one.

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### ***III. PENALTY GUIDELINES***

The following is intended to provide information regarding violations of laws and regulations under the jurisdiction of BAR and recommendations as to the appropriate range of penalties for each violation. When a single action leads to an accusation for violations of both a statute and its implementing regulation, unless special circumstances exist, the penalty assessed for that action should be based upon the greater penalty of the two violations. The standard terms and conditions of probation as stated herein shall be included for all probations. The optional terms and conditions of probation as stated herein are to be considered and imposed along with any other optional terms and conditions if the facts and circumstances of the case warrant. BAR suggests that in cases involving multiple violations, orders for suspension and/or other discipline run concurrently.

The minimum penalties for violations of the B&P code, H&S code, and CCR are reflected in the Disciplinary Guidelines Penalties Tables A, B and C, respectively. The individual violations within those code tables are listed in ascending numerical order. In determining the relevance of a particular violation to the registration or license subject to discipline, the appropriate authority and grounds for discipline sections of law should be consulted<sup>12</sup>. The minimum penalties are in addition to an order for recovery of BAR's reasonable costs of investigation and enforcement.

Where suspension is ordered, BAR recommends that the number of days of actual suspension be based upon the facts and circumstances of the specific case, shall be no less than 3 days and no more than 30 days. BAR recommends that the suspension days be consecutive days which the business is normally open to the public, and that they begin on the effective date of the decision.

The maximum penalty for each individual violation is revocation of the applicable registration/license, in addition to 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 penalty.

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

**Table A**  
**Disciplinary Guidelines Penalties for Business and Professions Code**

BUSINESS & PROFESSIONS CODE	Minimum Penalty
§ 125.9(b)(5)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 490	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 496	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 498	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 499	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9884.6	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9884.7(a)(1)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation

<sup>12</sup> See [Business and Professions Code § 9884.7](#) and [§ 9889.3](#) and [Health and Safety Code § 44002](#) and [§ 44072.2](#).

**Table A (continued)**  
**Disciplinary Guidelines Penalties for Business and Professions Code**

<b>BUSINESS &amp; PROFESSIONS CODE</b>	<b>Minimum Penalty</b>
§ 9884.7(a)(2)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9884.7(a)(3)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9884.7(a)(4)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 9884.7(a)(5)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 9884.7(a)(6)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9884.7(a)(7)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9884.7(a)(8)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9884.7(a)(9)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9884.7(a)(10)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 9884.8	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9884.9	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9884.10	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9884.11	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9888.3	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation

**Table A (continued)**  
**Disciplinary Guidelines Penalties for Business and Professions Code**

<b>BUSINESS &amp; PROFESSIONS CODE</b>	<b>Minimum Penalty</b>
§ 9889.3(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9889.3(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 9889.3(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9889.3(d)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 9889.3(e)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9889.3(f)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9889.3(g)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9889.3(h)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 9889.3(i)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 9889.16	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 9889.19	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation

**Table B**  
**Disciplinary Guidelines Penalties for Health and Safety Code**

<b>HEALTH AND SAFETY CODE</b>	<b>Minimum Penalty</b>
§ 44011.3	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 44012	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44014	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44014.5	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44015	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44015.5	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44016	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44017	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44017.3	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 44030(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44031.5	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44032	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44033(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation

**Table B (continued)**  
**Disciplinary Guidelines Penalties for Health and Safety Code**

<b>HEALTH AND SAFETY CODE</b>	<b>Minimum Penalty</b>
§ 44033(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44033(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44033(d)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44033(e)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 44036(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44050(e)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44060(g)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44072.2(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 44072.2(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44072.2(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44072.2(d)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44072.2(e)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 44072.2(f)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation

**Table B (continued)**  
**Disciplinary Guidelines Penalties for Health and Safety Code**

<b>HEALTH AND SAFETY CODE</b>	<b>Minimum Penalty</b>
§ 44072.2(g)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 44072.2(h)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 44072.10(c)	Invalidation/Revocation of applicable registration/license (Pursuant to H&S code section 44072.8 when a license issued under the Motor Vehicle Inspection Program has been revoked or suspended following a hearing, any additional license issued under the Motor Vehicle Inspection Program may likewise be suspended or revoked)

**Table C**  
**Disciplinary Guidelines Penalties for California Code of Regulations**

<b>CALIFORNIA CODE OF REGULATIONS</b>	<b>Minimum Penalty</b>
§ 3303.3	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3305	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3307(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3307(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3307(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3307(d)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3307(e)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3307(f)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3308(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation

**Table C (continued)**  
**Disciplinary Guidelines Penalties for California Code of Regulations**

CALIFORNIA CODE OF REGULATIONS	Minimum Penalty
§ 3308(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3308(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3309	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3316	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3321	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.15(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.15(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.15(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3340.15(d)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.15(e)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.15(f)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.15(g)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.15(h)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation

**Table C (continued)**  
**Disciplinary Guidelines Penalties for California Code of Regulations**

CALIFORNIA CODE OF REGULATIONS	Minimum Penalty
§ 3340.16	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.16.4	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.16.5	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.17	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3340.22	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3340.22.1	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3340.23(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.23(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3340.23(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.30(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3340.30(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3340.30(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3340.30(d)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.35	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3340.41(a)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation

**Table C (continued)**  
**Disciplinary Guidelines Penalties for California Code of Regulations**

CALIFORNIA CODE OF REGULATIONS	Minimum Penalty
§ 3340.41(b)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3340.41(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3340.41(d)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3340.41(f)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3340.41.3	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3340.42	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3340.42.2	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3340.45	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3351.3	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3351.5	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3351.6	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3353	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3355	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation

**Table C (continued)**  
**Disciplinary Guidelines Penalties for California Code of Regulations**

CALIFORNIA CODE OF REGULATIONS	Minimum Penalty
§ 3356 (a) – (c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 2 year probation
§ 3356 (d)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3356.1	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3358	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3359	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3360.2	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3361.1	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3362.1	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3363.4	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3364	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3365	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3366	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3367	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 5 year probation
§ 3368	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3371	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation

**Table C (continued)**  
**Disciplinary Guidelines Penalties for California Code of Regulations**

CALIFORNIA CODE OF REGULATIONS	Minimum Penalty
§ 3372.1	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3373	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3374	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3375	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3376	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3377	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation
§ 3394.44(c)	Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and 3 year probation

## TERMS AND CONDITIONS OF PROBATION

### **STANDARD TERMS AND CONDITIONS OF PROBATION:**

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

During the period of probation, respondent(s) shall comply with all federal and state laws, including the 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(s) shall prominently post a sign/signs, provided by BAR, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign/signs shall be conspicuously displayed in a location open to and frequented by customers. The location of the sign/signs 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(s) 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 quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

#### **4. Report Financial Interests**

Respondent(s) shall, within 30 days of the effective date of the decision and within 30 days from the date of a request by the Bureau during the period of probation, report any financial interest which any respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to 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 should leave the jurisdiction of California to reside or do business elsewhere, or otherwise ceases to do business in the jurisdiction of California, respondent shall notify the BAR in writing within 10 days of the dates of departure and return, of the dates of cessation and resumption of business in California. All provisions of probation other than cost reimbursement requirements, restitution requirements, and 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 during the tolling period business or work relevant to the probationary license or registration is conducted or performed.

## **7. Violation of Probation**

Should respondent violate or fail 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. If a petition to revoke probation or an accusation is filed against respondent during probation, or BAR has requested that the Attorney General's Office prepare a petition to revoke probation or an accusation, the Director shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against respondent.

## **8. Maintain Valid License**

Respondent shall, at all times while on probation, maintain a current and active registration and/or license 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. Should respondent's registration or license expire during a term of probation, by operation of law or otherwise, 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 Reimbursement - (Applicable when cost reimbursement is ordered):**

Respondent shall pay the Bureau of Automotive Repair \$ \_\_\_\_\_ as and for the reasonable costs of the investigation and prosecution 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 payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, such failure shall constitute a violation of probation. 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(s) or license(s) 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 involving a stay of invalidation or revocation, if respondent(s) cease(s) business operations or are otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily 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 acceptance of the request, respondent(s) shall within 30 calendar days deliver respondent's registration(s), license(s) and certificate(s) to BAR or its designee and respondent(s) shall no longer engage in the business for which the license or registration was issued. Upon formal acceptance of the tendered registration(s), license(s) and certificate(s), respondent(s) shall no longer be subject to the terms and conditions of probation.

The voluntary surrender of an invalidation or revocation stay shall be considered a disciplinary action and shall become a part of respondent(s) license history with BAR. Upon acceptance of a surrender, the affected license(s), registration(s), and/or certificate(s) shall be invalidated or revoked by BAR. Respondent may not petition the Director for reinstatement of the surrendered registration(s), license(s) and certificate(s). Respondent(s) may not apply for a new registration or license under the jurisdiction of BAR on any date prior to the original scheduled date of probation completion. Should respondent(s) at any time after this date apply to BAR for registration or licensure, respondent(s) 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:**

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

Within 30 days of the effective date of the Decision, respondent shall make restitution as follows: to [name of recipient] in the amount of \$ \_\_\_\_\_ and shall provide evidence satisfactory to the Bureau that restitution in this amount has been made. Alternatively, respondent may provide a written statement from the recipient attesting that full restitution has been made in another manner satisfactory to the recipient.

**13. Training Course**

*a) Applicable to Smog Check technicians/inspectors 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. If proof of enrollment and/or successful course completion are not furnished to the Bureau within these specified timeframes, respondent's license shall be immediately suspended until such proof is received. Failure to comply shall also constitute a violation of probation.

*b) (Applicable to ARDs):*

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.

**14. Employment or Address Change Notification** - *(Applicable to Smog Check technicians/inspectors, and lamp and brake adjusters only):*

Respondent shall notify BAR in writing within 14 days of any change of place of employment, or place of residence, or mailing address. The written notice shall include the employer's name, address and telephone number, respondent's residence address and telephone number, and respondent's mailing address.

**15. 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/her license, respondent shall provide each of his/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.

## **16. 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 necessary to properly perform such work. BAR shall be given at least 10 day notice of the availability of the equipment for inspection by a BAR representative.

b) *(Applicable to ARDs 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 necessary to properly perform such work. BAR shall be given at least 10 day notice of the availability of the equipment for inspection by a BAR representative.

c) *(Applicable to ARDs found to have violated Sections 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 necessary to properly perform such work. BAR shall be given at least 10 day notice of the availability of the equipment for inspection by a BAR representative.

**17. Abstain from use of Alcohol or Controlled Substances** - *(Required to be considered whenever action is taken based upon a Statement of Issues relying on B&P Code section 480 which involved alcohol or controlled substances):*

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation. Respondent shall completely abstain from the use of or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

**18. Shall not perform a Smog Check Inspection on, or issue a Certificate of Compliance to, any vehicle that has been directed to 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 H&S Code, 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 perform Smog Check inspections on, or issue certificates of compliance to, any vehicles that have been directed to a STAR station for their biennial smog check pursuant to section 44010.5 or 44014.7 under the Health and Safety Code.

**19. Supervision Requirements<sup>13</sup>** - *(Required for probationary registrations<sup>14</sup>, 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.

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<sup>13</sup> Individuals owning multiple ARDs shall submit to BAR for approval a corrective action plan describing how they intend to satisfy the requirements of this condition.

<sup>14</sup> See Chapter I, Page 4 of [Guidelines for Disciplinary Penalties and Terms of Probation "Probationary Registrations"](#)