



DEPARTMENT OF CONSUMER AFFAIRS

BAR

Bureau of Automotive Repair

GUIDELINES FOR DISCIPLINARY PENALTIES AND TERMS OF PROBATION

[MAY 1997]

ISSUED BY THE
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TABLE OF CONTENTS

<u>Chapter</u>	<u>Page</u>
I. Introduction <u>GENERAL CONSIDERATIONS</u>.....	1
<u>Accusations</u>	1
<u>Denials/Statement of Issues</u>	1
<u>Probationary Registrations and Licenses</u>	1
<u>Proposed Decisions</u>	3
<u>Stipulated Settlements</u>	3
<u>Petition for Reinstatement/Reduction of Penalty</u>	3
<u>Violation of Probation</u>	4
II. <u>FACTORS IN AGGRAVATION AND IN MITIGATION</u>.....	5
4.— <u>Factors in Aggravation</u>	45
2.— <u>Factors in Mitigation</u>	25
III. <u>STANDARD TERMS AND CONDITIONS OF PROBATION</u>	3
IV. <u>PENALTY GUIDELINES</u>.....	57
4.— <u>Disciplinary Guidelines Penalties for Business and Professions Code</u> ...	58
2.— <u>Disciplinary Guidelines Penalties for Health and Safety Code</u>	710
3.— <u>Disciplinary Guidelines Penalties for California Code of Regulations,</u> <u>Title 16</u>	813
IV. <u>MODEL DISCIPLINARY ORDERS</u>.....	18
<u>Revocation</u>	18
<u>Standard Stay Order</u>	18
<u>Cost Recovery</u>	18
<u>Terms and Conditions of Probation</u>	18
<u>Standard Terms and Conditions of Probation</u>	19
<u>Optional Terms and Conditions of Probation</u>	21

GUIDELINES FOR DISCIPLINARY PENALTIES AND TERMS OF PROBATION

[May 1997]

I. INTRODUCTION

To foster uniformity of penalties and to make sure our licensees and registrants understand the consequences of violations of the Automotive Repair Act or the Smog Check Program, the Bureau of Automotive Repair has established these guidelines. The guidelines provide a range of penalties for each section of law found to have been violated. The Bureau requests that Administrative Law Judges take into account the "Factors in Aggravation and in Mitigation" listed below, when deciding the severity of the penalty within the range.

Should a probationary period be a part of a proposed decision, the Bureau requests that the Administrative Law Judge impose the appropriate "Terms and Conditions of Probation," as outlined below. These terms and conditions are intended to protect the public from continued illegal behavior and to facilitate the rehabilitation of the probationer without being unduly burdensome or anti-competitive.

The letters A through C following each section of law or regulation refer to the Standard Terms and Conditions of Probation (A-C) to be applied for a confirmed violation of that section.

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. 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 disciplinary guidelines include penalty guidelines and probationary terms to be followed in administrative disciplinary actions. The guidelines for specific offenses are referenced to the applicable provisions of the Automotive Repair Act, the Motor Vehicle Inspection Program laws, and BAR regulations. For the purposes of this document, the 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, while optional conditions are those conditions which address the specific circumstances of each 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 these penalties to be imposed consistently and appropriately based on 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 in addition to other factors may necessitate departure. At the time of a hearing, an ALJ has the discretion to depart from the disciplinary guidelines as warranted. However, BAR requests 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 by BAR before final action is taken.

Additionally, the penalty guidelines apply only to 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.

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 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).

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 (BPC), and Section 44002 of the Health and Safety Code (HSC).

Denials/Statement of Issues

BAR will generally notify the applicant in writing of the license/application denial. The Notice of Denial 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 BPC, 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 BPC. 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 BPC, and the APA.

Probationary Registrations and Licenses

Pursuant to Section 9884.21 of the BPC, the Director may issue a probationary

registration/license to an applicant, 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/licenses 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 of any crime substantially related to the duties relevant to the registration or license applied for, with the exception of a sole conviction of licensing or registration requirement laws, within the three (3) years preceding the date the application for registration or licensure is received.
- 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 these Guidelines for Disciplinary Penalties and Terms of Probation, in addition to all competent evidence of rehabilitation 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/license is being offered to an applicant, BAR will do the following:

- 1) Notify the applicant that the application for a standard registration/license is denied. Notification will be made, and the opportunity for hearing provided for, as required under Section 485 of the BPC and the APA.
- 2) Offer the applicant a probationary registration/license subject to terms and conditions.

The applicant, when offered a probationary registration/license, will have 60 days from the date of service of the notice of denial of the application for a standard registration/license to do either of the following:

- 1) Indicate their acceptance, in writing, of the probationary registration/license and all specified terms and conditions, or
- 2) Reject the offer of a probationary registration/license subject to terms and conditions and request a hearing on the denial of the application for a standard registration/license.

If the applicant fails to accept the offer of a probationary registration/license, and does not request a hearing on the denial of the application for a standard registration/license within 60 days, the applicant's right to each will be deemed

waived. When an applicant accepts the offer of a probationary registration/license within this timeframe, any previous or subsequent requests for hearing on the denial of the standard registration/license will be considered withdrawn. Upon the BAR's receipt of written acceptance of the probationary registration/license, the registration/license will be issued with terms and conditions. The registration/license, 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/license 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. The 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 must 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 prosecution, as determined by the ALJ hearing the matter, pursuant to Section 125.3 of the BPC.

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 the respondent's 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 as detailed 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 the 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 elapsed from the effective date of the decision or from the date of the denial of a similar petition. Petitions for reinstatement or reduction of penalty shall be submitted to BAR 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 code(s) 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.

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

The Bureau normally submits cases for the filing of an Accusation based on investigations and the use of undercover vehicle operations in order to detect and document multiple violations of the Smog Check Program or the Automotive Repair Act.

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

4. Factors in Aggravation

- a~~1~~. Prior education/warnings from BAR.
- b~~.~~ Prior Notices of Violations.
- e~~2~~. Prior Office Conference(s) with BAR.
- d~~.~~ Prior adverse Inspection Reports.
- e~~.~~ Prior demonstrations of incompetence.
3. Prior violation of accepted trade standards.
- f~~4~~. Prior history of citations.
- e~~5~~. Prior history of formal disciplinary action.
- h~~6~~. Failure to permit BAR inspection of records.
- i~~7~~. Abuse of mechanic's lien.
- j~~8~~. Attempts to intimidate consumer.
- k~~9~~. Negligent or willful improper repair work that endangers consumer.
- l~~10~~. Evidence that the unlawful act was part of a pattern of practice.
- m~~11~~. Failure to comply with BAR request for corrective action/retraining.
- n~~12~~. Currently on probation for improper acts.
- e~~13~~. Failure to successfully complete prior ~~period~~ of probation.

- p14. Failure to pay court judgment to victim.
- q15. Violation of previous court order.
- r16. Any other conduct which constitutes fraud or gross negligence.
- 17. Commits any acts of dishonesty.

2. Factors in Mitigation

- a1. Evidence that the 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.
- b3. Evidence of voluntary participation in retraining for self or employees.
- e4. Evidence of voluntary purchase of proper diagnostic equipment and manuals.
- d5. Evidence of ~~temporary~~ medical condition that temporarily prevented the 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.
- e8. Evidence of No loss to consumer and no damage to consumer's property. (Undercover cars vehicles are treated as if they were viewed the same as consumers property.)
- f9. Evidence that ~~shep~~ the respondent has taken specific steps for retraining and has initiated steps to minimize recurrence.
- g10. Evidence of resolution of all consumer complaints with a subsequent change in business practice.
- h11. Evidence of internal control or audit designed to eliminate errors 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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IVIII. PENALTY GUIDELINES

~~Accusations are filed by the Bureau only in cases it deems serious. The Bureau's emphasis is on disciplining licensees who show a pattern of abuse or willful misconduct in dealing with the public. The following guidelines were formulated for licensees who are found to have committed substantial violations. The Bureau suggests that in cases involving multiple violations, orders for suspension or other discipline run concurrently.~~

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

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 minimum penalties for violations of the BPC, HSC, 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. The minimum penalties are in addition to an order for recovery of BAR's reasonable costs of investigation and enforcement.

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 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.

CODE SECTIONS

**TERMS AND
CONDITIONS OF
PROBATION**

1. ~~Business and Professions Code~~

~~§ 9884.7~~

~~(a) False and Misleading Statements~~

~~MIN. — 90-day suspension
80 days stayed
2 years probation~~

A

~~MAX. — Revocation~~

~~(d) Conduct Constituting Fraud~~

~~MIN. — Revocation, stayed
30-day suspension
5 years probation~~

A

~~MAX. — Revocation~~

~~(e) Gross Negligence~~

~~MIN. — 90-day suspension
80 days stayed
2 years probation~~

A

~~MAX. — Revocation~~

~~(f) Failure to Comply~~

~~MIN. — 180-day suspension
160 days stayed
2 years probation~~

A

~~MAX. — Revocation~~

~~(g) Willful Departure~~

~~MIN. — 90-day suspension
80 days stayed
2 years probation~~

A

~~Max. — Revocation~~

~~(h) — False Promises~~

~~Min. — 180-day suspension
160 days stayed
2 years probation~~

A

~~Max. — Revocation~~

~~§ 9884.8 — Improper Invoice~~

~~Min. — 10-day suspension
2 years probation~~

A

~~Max. — Revocation~~

~~§ 9884.9 — No Written Estimate~~

~~Min. — 90-day suspension
80 days stayed
2 years probation~~

A

~~Max. — Revocation~~

~~§ 9884.11 — Failure to Retain Records~~

~~Min. — 90-day suspension
80 days stayed
2 years probation~~

A

~~Max. — Revocation~~

~~§ 9889.16 — Licensed Installer Required~~

~~Min. — 90-day suspension
80 days stayed
2 years probation~~

A

~~Max. — Revocation~~

Table A

Disciplinary Guidelines Penalties for Business and Professions Code

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

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

<u>BUSINESS AND PROFESSIONS CODE</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...
<u>§ 9889.16</u>	<u>Failure to issue lamp or brake adjustment certificate upon request</u>	<u>3 years probation</u>
<u>§ 9889.19</u>	<u>Failure to charge appropriate fee for lamp and brake adjustment certificate</u>	<u>5 years probation</u>
<u>§ 17500</u>	<u>False or misleading statements generally</u>	<u>5 years probation</u>

2. Health and Safety Code

§ 44012 – Improper Inspections

~~MIN. – Revocation of ARD & Station license, stayed
30-day suspension of Station license
2-years probation~~

A & B

~~MAX. – Revocation of ARD & Station License~~

§ 44014 – Test and Repair Conducted by Unqualified/Unlicensed Technician/Station

~~MIN. – Revocation of ARD & Station license, stayed
30-day suspension of Station license
2-years probation~~

A

~~MAX. – Revocation of ARD & Station license~~

§ 44014.5(b) – Repairs Performed at a Test-Only Station

~~MIN. – Revocation of ARD & Station license, stayed
30-day suspension of Station/Technician license
2-years probation~~

A & B

~~MAX. – Revocation of ARD, stayed
3-years probation
Station license revoked~~

§ 44015 – Improper Issuance of Certificates of Compliance

~~MIN. – Revocation of ARD & Station license, stayed~~

A & B

~~30-day suspension of Station license
2-years probation~~

~~MAX. -- Revocation of ARD & Station license~~

~~§ 44017 -- Failure to Comply with Cost Limits~~

~~MIN. -- Revocation of ARD & Station license, stayed
30-day suspension of Station license
2-years probation~~

A & B

~~MAX. -- Revocation of ARD & Station license~~

~~§§ 44031.5 & 44032 -- Test and Repair by Non-Qualified Technician~~

~~MIN. -- Revocation of ARD & Station license, stayed
30-day suspension of Station license
2-years probation~~

A

~~MAX. -- Revocation of ARD & Station license~~

~~§ 44059 -- Making Any False Statement or Entry in Any Certificate of Compliance or TAS Analyzer~~

~~MIN. -- Revocation of ARD & Station license, stayed
30-day suspension of Station license
2-years probation~~

A & B

~~MAX. -- Revocation of ARD & Station license~~

Table B

Disciplinary Guidelines Penalties for Health and Safety Code

<u>HEALTH AND SAFETY CODE</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...
§ 44011.3	<u>Failure to comply with requirements for complete and partial pretest</u>	<u>2 years probation</u>
§ 44012	<u>Failure to comply with procedures for required testing at Smog Check station</u>	<u>5 years probation</u>

<u>HEALTH AND SAFETY CODE</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> <small>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...</small>
§ 44014	<u>Test and repair conducted by unqualified/unlicensed technician/station</u>	<u>3 years probation</u>
§ 44014.4	<u>Failure to comply with advertisement restrictions</u>	<u>3 years probation</u>
§ 44014.5	<u>Repairs performed at a test-only station</u>	<u>3 years probation</u>
§ 44015	<u>Improper issuance of certificate of compliance</u>	<u>5 years probation</u>
§ 44015.5	<u>Improper issuance of certificate of compliance or certificate of noncompliance to a new motor vehicle</u>	<u>5 years probation</u>
§ 44016	<u>Failure to perform repairs in accordance with established specifications and procedures</u>	<u>5 years probation</u>
§ 44017	<u>Failure to comply with repair cost limits</u>	<u>5 years probation</u>
§ 44017.3	<u>Failure to post required information at Smog Check station</u>	<u>2 years probation</u>
§ 44017.4	<u>Failure to properly inspect specially constructed vehicles</u>	<u>5 years probation</u>
§ 44030(a)	<u>Allowing unqualified Smog Check mechanic to perform Smog Check tests, services, and adjustments</u>	<u>3 years probation</u>
§ 44031.5	<u>Test and repair by unqualified Smog Check technician</u>	<u>3 years probation</u>
§ 44032	<u>Performance of test and repair by unqualified technician</u>	<u>5 years probation</u>
§ 44033(a)	<u>Failure to display identifying sign</u>	<u>2 years probation</u>
§ 44033(b)	<u>Requiring repairs as a condition of performing a test</u>	<u>3 years probation</u>
§ 44033(c)	<u>Failure to provide written estimate or repair choice statement</u>	<u>3 years probation</u>
§ 44033(d)	<u>Failure to separately state charges for testing and repairs</u>	<u>3 years probation</u>

<u>HEALTH AND SAFETY CODE</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> <u>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...</u>
§ 44033(e)	<u>Failure to post station and technician licenses</u>	<u>2 years probation</u>
§ 44035	<u>Failure to provide access to licensed station</u>	<u>2 years probation</u>
§ 44036(b)(1)	<u>Failure to utilize certified original equipment and replacement EIS parts</u>	<u>3 years probation</u>
§ 44036.5(b)	<u>Uncertified blend, fill, or sell of TAS calibration gases</u>	<u>3 years probation</u>
§ 44050(e)	<u>Failure to comply with an order of abatement or payment of an administrative fine</u>	<u>3 years probation</u>
§ 44060(g)	<u>Charging more for certificate than amount charged by the department</u>	<u>5 years probation</u>
§ 44072.2(a)	<u>Violation of the chapter and regulations</u>	<u>2 years probation</u>
§ 44072.2(b)	<u>Conviction of a substantially related crime</u>	<u>5 years probation</u>
§ 44072.2(c)	<u>Violation of regulations adopted by the Director</u>	<u>3 years probation</u>
§ 44072.2(d)	<u>Committed any act involving dishonesty, fraud, or deceit</u>	<u>5 years probation</u>
§ 44072.2(e)	<u>Misrepresentation of a material fact in obtaining a license</u>	<u>3 years probation</u>
§ 44072.2(f)	<u>Aiding or abetting an unlicensed person</u>	<u>3 years probation</u>
§ 44072.2(g)	<u>Failure to make, keep, or have available for inspection, records of transactions as a licensee</u>	<u>3 years probation</u>
§ 44072.2(h)	<u>Violates or attempts to violate the chapter</u>	<u>2 years probation</u>

<u>HEALTH AND SAFETY CODE</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> <u>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...</u>
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<p>§ 44072.10(c)</p>	<p>Fraudulent certification /inspection of vehicle</p>	<p>Invalidation/Revocation of applicable registration/license (Pursuant to HSC 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)</p>
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~~3. Cal. Code Regs., Title 16~~

~~§§ 3340.16 & 3340.16.5~~ Station Equipment and Testing Requirements

~~MIN. -- Revocation of ARD & Station license, stayed
10-day suspension of Station license
2 years probation~~

A, B & C

~~MAX. -- Revocation of ARD & Station license, stayed
60-day suspension of Station license
3 years probation~~

~~§ 3340.16.6~~ Requirement for Telephone Line

~~MIN. -- Revocation of ARD & Station license, stayed
30-day suspension of Station license
2 years probation~~

A & C

~~MAX. -- Revocation of ARD, stayed
3 years probation.
Revocation of Station license~~

~~§ 3340.41(a)~~ Failure to Give Customer a Copy of Test Report

~~MIN. -- Revocation of ARD & Station license, stayed
10-day suspension of Station license
2 years probation~~

A & B

~~MAX. -- Revocation of ARD & Station license, stayed
60-day suspension of Station license
3 years probation~~

~~§ 3340.41(b) & (c)~~ Tampering with or Entering False Information into a Test Analyzer System (TAS)

A & B

~~MIN. – Revocation of ARD & Station license, stayed
30-day suspension of Station license
2-years probation~~

~~MAX. – Revocation of ARD, stayed
3-years probation.
Revocation of Station license~~

~~§ 3340.41(d) – Failing to Follow Proper Specifications and Procedures
for Diagnosis and Repair~~

~~MIN. – Revocation of ARD & Station license, stayed
30-day suspension of Station license
2-years probation~~

A, B & C

~~MAX. – Revocation of ARD, stayed
3-years probation.
Revocation of Station license~~

~~§ 3360.2 – Ball Joints~~

~~MIN. – 90-day suspension~~

A

~~MAX. – Revocation~~

~~§ 3361.1 – Automatic Transmission~~

~~MIN. – 90-day suspension, 80 days stayed
2-years probation~~

A

~~MAX. – Revocation~~

~~§§ 3371 & 3372 – Misleading Advertising~~

~~MIN. – 180-day suspension, 160 days stayed
2-years probation~~

A

~~MAX. – Revocation~~

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

<u>CALIFORNIA CODE OF REGULATIONS</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> <small>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...</small>
§ 3303.3	<u>Failure to have correct mailing or street address on file with BAR</u>	<u>2 years probation</u>
§ 3305	<u>Failure to comply with lamp and brake adjusting standards</u>	<u>3 years probation</u>
§ 3307(a)	<u>Failure to appropriately display official station license</u>	<u>2 years probation</u>
§ 3307(b)	<u>Failure to appropriately display licenses of all official adjusters employed at station</u>	<u>2 years probation</u>
§ 3307(c)	<u>Failure to appropriately display official station sign</u>	<u>2 years probation</u>
§ 3307(d)	<u>Failure to post list of prices</u>	<u>2 years probation</u>
§ 3307(e)	<u>Failure to maintain adjusting, servicing, and testing instruments, machines, devices, and equipment</u>	<u>3 years probation</u>
§ 3307(f)	<u>Failure to make, keep, or have available for inspection, records of transactions as a licensee</u>	<u>3 years probation</u>
§ 3308(a)	<u>Failure to remove/cover official station sign when services of a licensed adjuster are no longer available</u>	<u>3 years probation</u>
§ 3308(b)	<u>Failure to remove/cover official station sign when station is no longer authorized to perform functions of licensed station</u>	<u>2 years probation</u>
§ 3308(c)	<u>Failure to return unused certificates when station license has expired or has been surrendered, suspended, or revoked</u>	<u>3 years probation</u>
§ 3309	<u>Failure to post official station sign</u>	<u>2 years probation</u>
§ 3316	<u>Failure to meet official lamp adjusting station requirements</u>	<u>3 years probation</u>
§ 3321	<u>Failure to meet official brake adjusting station operation and equipment requirements</u>	<u>3 years probation</u>

<u>CALIFORNIA CODE OF REGULATIONS</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> <i>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...</i>
§ 3340.15(a)	<u>Failure of Smog Check station to comply with work area requirement</u>	<u>3 years probation</u>
§ 3340.15(b)	<u>Failure of Smog Check station to have Smog Check technician present during hours of operation; testing/repair performed by technician</u>	<u>3 years probation</u>
§ 3340.15(c)	<u>Failure of Smog Check station to post station license and technician licenses</u>	<u>2 years probation</u>
§ 3340.15(d)	<u>Failure of Smog Check station to post list of prices</u>	<u>2 years probation</u>
§ 3340.15(e)	<u>Failure of Smog Check station to make, keep, or have available for inspection, records of transactions</u>	<u>3 years probation</u>
§ 3340.15(f)	<u>Failure of Smog Check station to be open and available to the general public for Smog Check Program services</u>	<u>3 years probation</u>
§ 3340.15(g)	<u>Failure of Smog Check station to provide access to BAR for quality assurance evaluation</u>	<u>3 years probation</u>
§ 3340.16	<u>Failure to comply with Smog Check test-only station requirements</u>	<u>3 years probation</u>
§ 3340.16.4	<u>Failure to comply with Smog Check repair-only station requirements</u>	<u>3 years probation</u>
§ 3341.16.5	<u>Failure to comply with Smog Check test-and-repair station requirements</u>	<u>3 years probation</u>
§ 3340.17	<u>Failure to comply with test equipment, electronic transmission, maintenance, and calibration requirements</u>	<u>5 years probation</u>
§ 3340.22	<u>Failure to display appropriate Smog Check station sign</u>	<u>2 years probation</u>
§ 3340.22.1	<u>Failure to display appropriate Smog Check station service sign</u>	<u>2 years probation</u>
§ 3340.23(a)	<u>Failure to remove/cover official Smog Check station sign when services of a licensed technician are no longer available</u>	<u>3 years probation</u>
§ 3340.23(b)	<u>Failure to remove/cover official Smog Check station sign when station is no longer authorized to perform functions of station</u>	<u>2 years probation</u>
§ 3340.23(c)	<u>Failure to return unused certificates when station license has expired or has been surrendered, suspended, or revoked</u>	<u>3 years probation</u>

<u>CALIFORNIA CODE OF REGULATIONS</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> <i>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...</i>
§ 3340.30(a)	<u>Failure of Smog Check technician to comply with inspection, testing, and repair requirements</u>	<u>5 years probation</u>
§ 3340.30(b)	<u>Failure of licensed technician to maintain correct mailing address on file with BAR</u>	<u>2 years probation</u>
§ 3340.30(c)	<u>Failure of licensed technician to notify BAR of change of employment</u>	<u>2 years probation</u>
§ 3340.30(d)	<u>Failure of licensed technician whose license has expired to cease to inspect, test, or repair failed vehicles</u>	<u>3 years probation</u>
§ 3340.35	<u>Failure to comply with certificate of compliance and noncompliance requirements</u>	<u>5 years probation</u>
§ 3340.41(a)	<u>Failure to give customer a copy of test report</u>	<u>2 years probation</u>
§ 3340.41(b)	<u>Tampering with or entering false information into emissions inspection system</u>	<u>3 years probation</u>
§ 3340.41(c)	<u>Entering information into the emissions inspection system for a vehicle other than the one being tested</u>	<u>5 years probation</u>
§ 3340.41(d)	<u>Failing to follow specifications and procedure for diagnosis and repair when vehicle fails Smog Check test</u>	<u>5 years probation</u>
§ 3340.41(f)	<u>Performing initial test, reinspection, or issue certificate of compliance to STAR directed vehicle at a non-STAR station</u>	<u>5 years probation</u>
§ 3340.41.3	<u>Failure to comply with invoice requirements</u>	<u>3 years probation</u>
§ 3340.42	<u>Failure to comply with Smog Check emissions test methods and standards</u>	<u>5 years probation</u>
§ 3340.42.2	<u>Failure to comply with on-board diagnostic inspection test methods and standards</u>	<u>5 years probation</u>
§ 3340.45	<u>Failure to comply with Smog Check Manual requirements and procedures</u>	<u>5 years probation</u>
§ 3340.50(e)	<u>Failure to comply with work area requirements</u>	<u>2 years probation</u>
§ 3340.50(f)	<u>Testing, repairing, or certifying a non-fleet vehicle by a fleet facility</u>	<u>3 years probation</u>

<u>CALIFORNIA CODE OF REGULATIONS</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> <i>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...</i>
§ 3340.50(g)	<u>Failure to facilitate onsite inspection</u>	<u>3 years probation</u>
§ 3340.50(h)	<u>Failure to display station license and technician licenses</u>	<u>2 years probation</u>
§ 3351.3	<u>Failure of automotive repair dealer to comply with display requirements</u>	<u>2 years probation</u>
§ 3351.5	<u>Failure of auto body repair shop to comply with equipment requirements</u>	<u>3 years probation</u>
§ 3351.6	<u>Failure of automotive air conditioning repair dealers to comply with equipment requirements</u>	<u>3 years probation</u>
§ 3353	<u>Failure to comply with written estimate and authorization requirements</u>	<u>3 years probation</u>
§ 3355	<u>Failure to comply with requirements for replaced parts that are not returnable</u>	<u>2 years probation</u>
§ 3356 (a) – (c)	<u>Failure to comply with invoice requirements</u>	<u>3 years probation</u>
§ 3356(d)	<u>Failure to provide and retain legible copy of invoice</u>	<u>3 years probation</u>
§ 3356.1	<u>Failure to comply with toxic waste disposal costs requirements</u>	<u>3 years probation</u>
§ 3358	<u>Failure to comply with maintenance of records requirements</u>	<u>3 years probation</u>
§ 3359	<u>Failure to comply with sublet disclosure requirement</u>	<u>3 years probation</u>
§ 3360.2	<u>Failure to comply with general requirements for the sale and installation of ball joints</u>	<u>3 years probation</u>
§ 3361.1	<u>Failure to comply with minimum requirements and standards for automatic transmissions</u>	<u>3 years probation</u>
§ 3362.1	<u>Failure to comply with engine changes requirements</u>	<u>3 years probation</u>
§ 3363.4	<u>Failure to comply with installation standards applicable to ignition interlock devices</u>	<u>3 years probation</u>

<u>CALIFORNIA CODE OF REGULATIONS</u>	<u>VIOLATION DESCRIPTION</u>	<u>MINIMUM PENALTY</u> <small>Invalidation/Revocation of applicable registration/license, invalidation/revocation stayed, suspension, and...</small>
§ 3364	<u>Defacing/removing vehicle identification information</u>	<u>3 years probation</u>
§ 3365	<u>Failure to comply with auto body and frame repair standards</u>	<u>3 years probation</u>
§ 3366	<u>Failure to comply with automotive air conditioning procedures</u>	<u>3 years probation</u>
§ 3367	<u>Improper installation, reinstallation, sale or distribution of previously deployed airbags</u>	<u>5 years probation</u>
§ 3368	<u>Improper receipt or payment of commissions, consideration, inducements, or referral fees for towing services</u>	<u>3 years probation</u>
§ 3371	<u>Untrue or misleading statements or advertising</u>	<u>3 years probation</u>
§ 3372.1	<u>Misleading price advertising by an automotive repair dealer</u>	<u>3 years probation</u>
§ 3373	<u>False or misleading records</u>	<u>3 years probation</u>
§ 3374	<u>Advertise, represent, or imply that a used part is new</u>	<u>3 years probation</u>
§ 3375	<u>Advertisement containing false or misleading information regarding guarantees or warranties</u>	<u>3 years probation</u>
§ 3376	<u>Failure to comply with requirements for disclosure of guarantee</u>	<u>3 years probation</u>
§ 3377	<u>False and misleading pro-rata guarantee</u>	<u>3 years probation</u>
§ 3394.44(c)	<u>Failure to timely comply with order of abatement or pay fine</u>	<u>3 years probation</u>

IV. MODEL DISCIPLINARY ORDERS

Model disciplinary orders and terms and conditions of probation have been developed to promote consistency when administrative disciplinary action is to be taken. The following language shall be used in every decision where the 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 immediately 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 prosecution 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. The Bureau suggests that in cases involving multiple violations, orders for suspension and/or other discipline run concurrently.

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 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 is normally 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.

III.—STANDARD TERMS AND CONDITIONS OF PROBATION

Terms to be included in all orders of probation.

A. ~~Standard Terms and Conditions~~ "A" include the following:

1. ~~During the period of probation, respondent(s) shall:~~

a1. Obey All Laws

During the period of probation, Respondent shall ~~C~~comply with all federal and state laws, including the statutes, regulations and rules governing automotive inspections, estimates and repairs all BAR registrations and licenses held by Respondent.

b2. Posting of Sign - (Applicable only when actual suspension of a registration or station license is ordered-):

During the period of suspension, Respondent shall prominently ~~P~~post a prominent sign/signs, provided by the Bureau 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 and shall be approved by BAR and shall remain posted during the entire period of actual suspension.

c3. Quarterly Reporting

During the period of probation, Respondent ~~or respondent's authorized representative must~~ shall report either in-person by personal appearance or in writing as prescribed determined by the Bureau of Automotive Repair BAR, on a schedule set by the Bureau 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.

d4. Report Financial Interests

Respondent shall, ~~W~~within 30 days of the effective date of this action the decision and within 30 days from the date of a request by BAR during the period of probation, report any financial interest which any Respondent or any partners, officers, or owners of the any ~~r~~Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

e5. Access to Examine Vehicles and Records

Respondent shall provide Bureau BAR representatives unrestricted access to inspect examine all vehicles (including parts) undergoing repairs 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.

- f. ~~If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.~~

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.

g7. Violation of Probation

Should the Director of Consumer Affairs determine that respondent has failed Respondent violate or fail to comply with the terms and conditions of probation in any respect, the Department may Director, after giving notice and opportunity to be heard [temporarily or permanently invalidate the registration] [suspend or revoke the license], 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.

- h. ~~If the accusation involves false and misleading advertising, during the period of probation, respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.~~

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. 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 Recovery - (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 twelve (12) 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 ceases business operations or is 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 shall within 30 calendar days deliver Respondent's registration(s), license(s) and certificate(s) to BAR or its designee and Respondent 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 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 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 at any time after this date apply to BAR for registration or licensure, 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

12. 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.

13. 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 which may subject Respondent's license to outright revocation; however, the Director or the Director's designee may elect to continue probation until such time as restitution has been made in the manner as proscribed.

14. Training Course

~~B. Standard Terms and Conditions "B" include the following:
(Applicable to Technicians only)~~

4. a) (Applicable to Smog Check technicians/inspectors only):

During the period of probation, Respondent shall attend and successfully complete a Bureau-certified 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. Said course shall be completed and 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 submitted to the Bureau within 60 180 days of the effective date of this the decision and order. If proof of completion of the enrollment and/or successful course completion is are not furnished to the Bureau within the 60-day period these specified timeframes, Respondent's license shall be immediately suspended until such proof is received. Failure to comply shall 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.

15. 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.

16. 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.

17. Prescribed Equipment

C. Standard Terms and Conditions "C" include the following:
(Applicable to Smog Check Stations only)

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, and BAR shall be given at least 10 days 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 days notice of the availability of the equipment for inspection by a BAR representative.

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

18. Abstain from use of Alcohol or Controlled Substances - *(Required to be considered whenever action is taken based upon a Statement of Issues relying on BPC 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.

19. 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 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 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.

20. 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.