KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
TIMOTHY J. MCDONOUGH
Deputy Attorney General
State Bar No. 235850
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2134
Facsimile: (510) 622-2270
Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **RICHMOND SMOG TEST ONLY** **12923 San Pablo Avenue** **Richmond, CA 94805** **WILLIAM ANTHONY MCINTOSH, OWNER** **Automotive Repair Dealer Registration No. ARD 240521** **Smog Check Test Only Station License No. TC240521** **and** **WILLIAM ANTHONY MCINTOSH** **573 Elsie Avenue** **San Leandro, CA 94577** **Advanced Emission Specialist Technician License No. EA 147997** Respondents.	Case No. 79/12-24 **ACCUSATION AND PETITION TO REVOKE PROBATION** **SMOG CHECK**

Complainant alleges:

PARTIES

1. Sherry Mehl ("Complainant") brings this Accusation and Pétition to Revoke Probation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

Automotive Repair Dealer Registration

2. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer Registration Number ARD 240521 ("registration") to William Anthony McIntosh ("Respondent"), doing business as Richmond Smog Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2012, unless renewed.

Smog Check Test Only Station License

3. On or about August 19, 2005, the Bureau of Automotive Repair issued Smog Check Test Only Station License Number TC 240521 ("station license") to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2012, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 2003, the Bureau issued Advanced Emission Specialist Number EA 147997 ("technician license") to Respondent. The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2011, unless renewed.

PRIOR DISCIPLINARY ACTION

5. Pursuant to the Decision and Order in Accusation No. 79/08-71, attached hereto as **Exhibit "A"** and incorporated herein by reference, effective March 9, 2009, the Director of Consumer Affairs ("Director") revoked Respondent's Automotive Repair Dealer Registration No. ARD 240521 (formerly No. AG 240521), Smog Check Test Only Station License No. TC 240521 (formerly TG 240521), and Respondent's Advanced Emission Specialist Technician License No. EA 147997; however, the revocations were stayed, and Respondent was placed on probation for five (5) years with terms, including Terms 1c, 2a, and 3a, set forth as follows:

Terms 1c, 2a, and 3a - Obey all Laws: Respondent shall comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

///

///

STATUTORY PROVISIONS

6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
>
> (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
>
> (4) Any other conduct which constitutes fraud.
>
> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.
>
> (c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

7. Code section 9884.9 states, in pertinent part:

> (a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order .

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

_____

(signature or initials)"

8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

9. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director

of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

13. Section 44072.8 of the Health and Safety Code states:

"When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

COST RECOVERY

14. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

ACCUSATION

UNDERCOVER OPERATION NO. 1 – JUNE 7, 2010

15. On or about June 7, 2010, a Bureau undercover operator ("operator") drove a Bureau documented 1995 Chevrolet Impala to Respondent's facility and requested a smog inspection. The vehicle could not pass a smog inspection because the vehicle's positive crankcase ventilation ("PCV") system was missing. The operator signed a work order but he was not provided with a copy of the document. Respondent performed the smog inspection and issued electronic Certificate of Compliance No. NU351645, certifying that the vehicle was in compliance with all applicable laws and regulations. In fact, the vehicle could not pass the visual portion of the smog inspection because the vehicle's PCV system was missing.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

16. Respondent has subjected his registration to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that on or about June 7, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing electronic Certificate of Compliance No. NU351645 for the 1995 Chevrolet Impala, certifying that it was in compliance with applicable laws and regulations. In fact, the vehicle

could not have passed the visual portion of the smog inspection because the vehicle's PCV system was missing.

SECOND CAUSE FOR DISCIPLINE

(Failure to Provide a Copy of a Signed Document)

17. Respondent has subjected his registration to disciplinary action pursuant to Code section 9884.7, subdivision (a)(2), in that on or about June 7, 2010, Respondent failed to provide the operator with a copy of the work order as soon as he signed the document.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent has subjected his registration to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that on or about June 7, 2010, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NU351645 for the 1995 Chevrolet Impala without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate Prior to Repairs)

19. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about June 7, 2010, Respondent failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for a specific job.

FIFTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

20. Respondent has subjected his station license to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on or about June 7, 2010, with regard to the 1995 Chevrolet Impala, he violated sections of that Code, as follows:

///

///

a. **Section 44012, subdivision (a)**: Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate of Compliance No. NU351645 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of Compliance No. NU351645, certifying that the vehicle had been inspected as required when, in fact, it had not.

SIXTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

21. Respondent has subjected his station license to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about June 7, 2010, regarding the 1995 Chevrolet Impala, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. NU351645 without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. NU351645 even though the vehicle had not been inspected in accordance with section 3340.42 of that Code.

c. **Section 3340.42**: Respondent failed to conduct the required smog tests and inspections of that vehicle in accordance with the Bureau's specifications.

///

///

SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

22. Respondent has subjected his station license to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about June 7, 2010, regarding the 1995 Chevrolet Impala, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NU351645 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

23. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that regarding the 1995 Chevrolet Impala, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle's PCV system was missing.

d. **Section 44059**: Respondent entered false information for electronic Certificate of Compliance No. NU351645, certifying that the vehicle had been inspected as required when, in fact, it had not.

///

///

///

NINTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

24. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that regarding the 1995 Chevrolet Impala, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. NU351645 without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the Emission Inspection System ("EIS") for electronic Certificate of Compliance No. NU351645 by entering "Pass" for the visual inspection of the PCV system when, in fact, the vehicle could not pass the visual inspection because the vehicle's PCV system was missing.

d. **Section 3340.42**: Respondent failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

TENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

25. Respondent has subjected his technician license to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NU351645 for the 1995 Chevrolet Impala without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

///

///

UNDERCOVER OPERATION NO. 2 – JUNE 7, 2010

26. On or about June 7, 2010, a Bureau undercover operator ("operator") drove a Bureau documented 1992 Oldsmobile Bravada to Respondent's facility and requested a smog inspection. The vehicle could not pass a smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications. The operator signed a work order but he was not provided with a copy of the document. Respondent performed the smog inspection and issued electronic Certificate of Compliance No. NU369051, certifying that the vehicle was in compliance with all applicable laws and regulations. In fact, the vehicle could not pass the smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

ELEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

27. Respondent has subjected his registration to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that on or about June 7, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing electronic Certificate of Compliance No. NU369051 for the 1992 Oldsmobile Bravada, certifying that it was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the functional portion of the smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Provide a Copy of a Signed Document)

28. Respondent has subjected his registration to disciplinary action pursuant to Code section 9884.7, subdivision (a)(2), in that on or about June 7, 2010, Respondent failed to provide the operator with a copy of the work order as soon as he signed the document.

THIRTEENTH CAUSE FOR DISCIPLINE

(Fraud)

29. Respondent has subjected his registration to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that on or about June 7, 2010, he committed acts which

constitute fraud by issuing electronic Certificate of Compliance No. NU369051 for the 1992 Oldsmobile Bravada without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate Prior to Repairs)

30. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about June 7, 2010, Respondent failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for a specific job.

FIFTEENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

31. Respondent has subjected his station license to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on or about June 7, 2010, with regard to the 1992 Oldsmobile Bravada, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate of Compliance No. NU369051 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of Compliance No. NU369051, certifying that the vehicle had been inspected as required when, in fact, it had not.

///

///

SIXTEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

32. Respondent has subjected his station license to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about June 7, 2010, regarding the 1992 Oldsmobile Bravada, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. NU369051 without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of Compliance No. NU369051 even though the vehicle had not been inspected in accordance with section 3340.42 of that Code.

c. **Section 3340.42**: Respondent failed to conduct the required smog tests and inspections of that vehicle in accordance with the Bureau's specifications.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

33. Respondent has subjected his station license to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about June 7, 2010, regarding the 1992 Oldsmobile Bravada, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NU369051 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

///

///

///

///

EIGHTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

34. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that regarding the 1992 Oldsmobile Bravada, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

d. **Section 44059**: Respondent entered false information for electronic Certificate of Compliance No. NU369051, certifying that the vehicle had been inspected as required when, in fact, it had not.

NINETEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

35. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that regarding the 1992 Oldsmobile Bravada, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. NU369051 without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

///

c. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS for electronic Certificate of Compliance No. NU369051 by entering "Pass" for the functional portion of the smog inspection when, in fact, the vehicle could not pass the functional portion of the smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

d. **Section 3340.42**: Respondent failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

TWENTIETH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

36. Respondent has subjected his technician license to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NU369051 for the 1992 Oldsmobile Bravada without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

PETITION TO REVOKE PROBATION

37. The allegations of paragraphs 1 through 36 of the accusation above are incorporated herein by reference as though fully set forth and are realleged.

38. Grounds exist to revoke the probation and reimpose the order of revocation of Respondent's Automotive Repair Dealer Registration No. ARD 240521 (formerly AG 240521), Smog Check Test Only Station License No. TC 240521 (formerly TG 240521), and Advanced Emission Specialist Technician License No. EA 147997, in that Respondent failed to comply with all statutes, regulations, and rules governing estimates and inspections as required by Terms 1c, 2a, and 3a of the terms of the probation under Decision and Order in Accusation No. 79/08-71, as set forth in paragraphs 15 through 36 of the accusation above.

///

///

OTHER MATTERS

39. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently, the registrations for all places of business operated in this state by William Anthony McIntosh, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

40. Under section 44072.8 of the Health and Safety Code, if Smog Check Station License No. TC 240521, issued to William Anthony McIntosh doing business as Richmond Smog Test Only, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director including, but not limited to, Advanced Emission Specialist Technician License No. EA 147997, issued to William Anthony McIntosh.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Vacating the stay and reimposing the order of revocation of Automotive Repair Dealer Registration No. ARD 240521, issued to William Anthony McIntosh, doing business as Richmond Smog Test Only;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued in the name of William Anthony McIntosh;

3. Vacating the stay and reimposing the order of revocation of Smog Check Test Only Station License Number TC 240521, issued to William Anthony McIntosh, doing business as Richmond Smog Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of William Anthony McIntosh;

5. Vacating the stay and reimposing the order of revocation of Advanced Emission Specialist Technician License Number EA 147997, issued to William Anthony McIntosh;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of William Anthony McIntosh;

7. Ordering William Anthony McIntosh to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

8. Taking such other and further action as deemed necessary and proper.

DATED: 9/7/11

SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2010900420
10743057.doc

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

In the Matter of the Accusation Against: **RICHMOND SMOG TEST ONLY** 12923 San Pablo Avenue Richmond, California 94805 WILLIAM A. MCINTOSH, Owner Automotive Repair Dealer Registration No. AG 240521 Smog Check Test Only Station License No. TG 240521 and **WILLIAM A. MCINTOSH** San Francisco, California Advanced Specialist Technician License No. EA 147997 and **PETER BYRON JAMISON** Richmond, California 94804 Advanced Emission Specialist Technician License No. EA 147508 Respondents.	Case No. 79/08-71 OAH No. 2008070178

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter only as to respondent Richmond Smog Test Only, Automotive Repair Dealer Registration No. AG 240521 and Smog Check Test Only Station License No. RG 240521 and William A. McIntosh, Advanced Emission Specialist Technician License No. EA 147997. However, pursuant to Government Code section 11517(c)(2)(C), a technical change is being made to the Order found on pages 14 –1 7 of the Proposed Decision. The Order should reflect one payment of $15,397.33. This change does not affect the factual or legal basis of the Proposed Decision. The Order is, therefore, modified to read as follows:

ORDER

1. Smog Check Test Only Station License number TG 240521 issued to Richmond Smog Test Only, William A. McIntosh, owner, is revoked. However, the revocation of the smog check station license is stayed, and respondent shall be placed on probation for five (5) years upon the following terms and conditions:

a. Smog Check Test Only Station License Number TG 240521 shall be actually suspended for thirty (30) days commencing on the effective date of this Decision.

b. Respondent shall post a prominent sign, provided by the bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

c. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

d. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the bureau, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

e. Within 30 days of the effective date of this action, respondent shall report any financial interest which any partners, officers or owners of respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

f. Respondent shall provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

g. If an accusation is filed against respondent during the period of probation, the Director of the Department 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.

h. Should the Director of the Department of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Director may, after giving notice and an opportunity to be heard, revoke the smog check station license.

2. Automotive Repair Dealer Registration number AG 240521 issued to Richmond Smog Test Only, William A. McIntosh, owner, is permanently invalidated. However, the permanent invalidation of the ARD registration is stayed and respondent shall be placed on probation for five (5) years upon the following terms and conditions:

a. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the bureau, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 30 days of the effective date of this action, respondent shall report any financial interest which any partners, officers or owners of respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

d. Respondent shall provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

e. If an accusation is filed against respondent during the period of probation, the Director of the Department 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.

f. Should the Director of the Department of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Director may, after giving notice and an opportunity to be heard, permanently invalidate the ARD registration.

3. Advanced Emission Specialist Technician License No. EA 147997 issued to William A. McIntosh is revoked. However, the revocation of the advanced emission specialist technician license is stayed and respondent shall be placed on probation for five (5) years upon the following terms and conditions:

a. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the bureau, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Respondent shall complete an 8-hour smog inspection training course within 30 days of the effective date of this decision.

d. If an accusation is filed against respondent during the period of probation, the Director of the Department 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.

e. Should the Director of the Department of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Director may, after giving notice and an opportunity to be heard, revoke the advanced emission specialist technician license.

4. Respondent shall pay to the bureau the sum of $15,397.33. This obligation is a joint and severable one with respondent Peter Byron Jamison. This obligation shall be offset by any payment made by respondent Jamison, or by any payment made by respondent McIntosh pursuant to conditions of probation imposed in this proceeding on any other license or registration held by him.

This Decision shall become effective 3/9/09.

IT IS SO ORDERED this 3rd day of February, 2009.

P. J. Harris

PATRICIA HARRIS
Deputy Director, Board/Bureau Support
Department of Consumer Affairs

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

In the Matter of the Accusation Against: RICHMOND SMOG TEST ONLY 12923 San Pablo Avenue Richmond, California 94805 WILLIAM A. MCINTOSH, OWNER Automotive Repair Dealer Registration No. AG 240521 Smog Check Test Only Station License No. TG 240521, and WILLIAM A. MCINTOSH San Francisco, California Advanced Emission Specialist Technician License No. EA 147997, and PETER BYRON JAMISON Richmond, California 94804 Advanced Emission Specialist Technician License No. EA 147508, Respondents.	Case No. 79/08-71 OAH No. 2008070178

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 14, 2009.

Deputy Attorney General Char Sachson represented complainant Sherry Mehl, Chief of the Bureau of Automotive Repair.

Dennis Cashman, Attorney at Law, represented William Anthony McIntosh, who was present at hearing.

There was no appearance by, or on behalf of, respondent Peter Byron Jamison.

The matter was submitted for decision on January 14, 2009.

SUMMARY

In two surveillance operations conducted by the bureau in August 2007 respondent Peter Byron Jamison was observed clean-piping a total of ten vehicles. In two undercover operations conducted on October 10, 2007, respondent McIntosh passed two vehicles that could not pass the visual portion of the smog test because their positive crankcase ventilation systems had been removed.

Respondent Jamison did not appear at hearing and is in default.

Respondent William A. McIntosh stipulates to all the factual allegations concerning these events and to each of the alleged bases for discipline of his three bureau licenses. He presented evidence in mitigation and rehabilitation and requests that he be allowed to retain his licenses on a probationary basis.

FACTUAL FINDINGS

Respondent Jamison

1. On August 18, 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License number EA 14508 to respondent Peter Byron Jamison. The license is current and will expire October 31, 2009.

2. Respondent Jamison was properly served with the accusation and notice of hearing in accordance with the requirement of the Administrative Procedure Act. Although he filed a notice of defense, he did not appear at hearing. Respondent Jamison was found in default and the matter was remanded to the bureau for preparation of a default decision.

Respondent McIntosh

3. On August 17, 2005, the bureau issued Automotive Repair Dealer Registration number AG 240521 to William A. McIntosh, doing business as Richmond Smog Test Only. The license is current and will expire July 31, 2009.

4. On August 18, 2005, the bureau issued Smog Check Test Only Station License number TG 240521 to William A. McIntosh, doing business as Richmond Smog Test Only. The license is current and will expire on July 31, 2009.

5. On October 13, 2003, the bureau issued Advanced Emission Specialist Technician License number EA 147997 to respondent McIntosh. The license is current and will expire on November 30, 2009.

Surveillance Operation August 21, 2007

6. On August 21, 2007, the bureau conducted a videotaped surveillance of respondent McIntosh's Richmond facility. The surveillance operation and information obtained from the bureau's Vehicle Inspection Data revealed that respondent Jamison performed three smog inspections that resulted in the issuance of certificates of compliance for vehicles set forth in Table One, below. In issuing the certificates of compliance, respondent Jamison certified that he had tested and inspected the vehicles and that the vehicles were in compliance with applicable laws and regulations.

Respondent Jamison performed the smog inspections using the clean-piping method by using the tailpipe emissions of vehicles other than the vehicles being certified in order to issue the certificates of compliance. The vehicles certified by respondent Jamison were not in the test bay at the time respondent Jamison performed the smog inspections.

Table One

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
8/21/2007 0901 to 0905 hours	1997 Ford Explorer Lic. No. 4SRW370	White Ford Van	MU396252C
8/21/2007 1426 to 1430 hours	1999 Honda Civic Lic. No. 4GLM228	White Infinity 130	MU396261C
8/21/2007 1434 to 1438 hours	1992 Buick Century Lic No. 3AXZ283	White Infinity 130	MU396262C

Surveillance Operation August 23, 2007

7. On August 23, 2007, the bureau conducted a second videotaped surveillance of respondent McIntosh's Richmond facility. The surveillance operation and information obtained from the bureau's Vehicle Inspection Data revealed that respondent Jamison performed seven smog inspections that resulted in the issuance of certificates of compliance for vehicles set forth in Table Two, below. In issuing the certificates of compliance, respondent Jamison certified that he had tested and inspected the vehicles and that the vehicles were in compliance with applicable laws and regulations.

Respondent Jamison performed the smog inspections using the clean-piping method by using the tailpipe emissions of vehicles other than the vehicles being certified in order to issue the certificates of compliance. The vehicles certified by respondent Jamison were not in the test bay at the time he performed the smog inspections.

Table Two

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
8/23/2007 1225 to 1228 hours	1990 Acura Legend, VIN No. # JH4KA4669LC036604	Red Jaguar XJ6	MU396277C
8/23/2007 1248 to 1252 hours	1998 Ford F-Series Lic. No. 7E17177	Red Jaguar XJ6	MU396278C
8/23/2007 1258 to 1303 hours	1991 GMC C2500 Sierra Lic. No. 4E73961	Red Jaguar XJ6	MU396279C
8/23/2007 1327 to 1335 hours	1995 Mitsubishi Eclipse Lic. No. 4FNK753	Red Jaguar XJ6	MU396280C
8/23/2007 1404 to 1430 hours	1996 Oldsmobile Achieva Lic. No. 5UTY982	Infinity 130	MU396281C
8/23/2007 1452 to 1458 hours	1989 Nissan 240SX Lic. No. 3SJZ614	Red Nissan pickup truck	MU396283C
8/23/2007 1508 to 1511 hours	1994 Mazda 929 Lic. No. 3GPR494	Red Nissan pick-up truck	MU396285C

Undercover Operation 1-October 10, 2007

8. On October 10, 2007, a bureau undercover operator using the alias Curt Olinger (operator) drove a bureau-documented 1996 Ford Explorer, California license plate number 3PZE600, to respondent McIntosh's Richmond facility for a smog inspection. The vehicle could not pass a smog inspection because the positive crankcase ventilation system (PCV) was missing from the vehicle. Respondent McIntosh performed the smog inspection and issued electronic Certification of Compliance number VL147782C, certifying that he had tested the 1996 Ford Explorer and that the vehicle was in compliance with applicable laws and regulations. The vehicle could not pass the visual portion of the smog inspection because the PCV system was missing.

Undercover Operation 2-October 10, 2007

9. On October 10, 2007, the operator drove a second bureau-documented vehicle, a 1998 Ford E-150 Van, California license plate number 5R77178, to respondent McIntosh's Richmond facility for a smog inspection. The vehicle could not pass a smog inspection because the PCV system was missing from the vehicle. Respondent McIntosh performed the smog inspection and issued electronic Certification of Compliance number VL147783C, certifying that he had tested the 1998 Ford E-150 and that the vehicle was in compliance with applicable laws and regulations. The vehicle could not pass the visual portion of the smog inspection because the PCV system was missing.

Other Matters

10. Respondent Jamison had been in the smog business for many years and came highly recommended when he came to work as an independent contractor at the Richmond facility. Respondent Jamison committed the clean-piping in order to earn money to pay for medical treatment for himself and for his ailing mother. He never told respondent McIntosh about his clean-piping activities, and he covered-up his actions well so that respondent McIntosh would not notice them. Jamison knew that McIntosh did not approve of clean-piping and that he was a by-the-book owner.

11. Respondent McIntosh was not involved in the clean-piping of the vehicles. He did not profit from them. He was not present at the facility on the two days that the bureau observed McIntosh clean-piping. He was completely unaware of what Jamison was doing and was surprised when he learned of it from the bureau. He had been adamant with Jamison that "we do things up front," and he believed that Jamison was doing just that.

12. Respondent McIntosh understands that as the owner of the Richmond facility he is fully responsible for Jamison's conduct, notwithstanding that Jamison was an independent contractor. Jamison no longer works at the Richmond facility.

13. Respondent McIntosh was the smog technician who passed the two undercover vehicles that had a missing PCV system. Respondent McIntosh admits that he failed to notice the missing PCV systems when he conducted the visual examinations and offers no excuses except that he was working too quickly. His errors were a huge wake-up call. He now performs his visual inspections in a slower and more methodical manner, checking off each component out loud by numerical order.

14. Respondent McIntosh entered the smog business after being laid off in the information technology industry. He performed smog work for others for two years and then was able to purchase the Richmond facility in June 2005.

15. Respondent McIntosh was open and honest in his testimony at hearing. He was candid with the bureau early on in the disciplinary process. He is willing to abide by any conditions the bureau places on him in order to continue operating. At the time of the clean-piping incidents, McIntosh was absent from the Richmond facility about 35 to 40 percent of the time that Jamison performed smog checks, and he came by the shop only once a day for about ten minutes. Now, he is in his facility at least two to three times a day. When he is there he walks into the bay and confirms that the vehicle being tested by the smog technician is the vehicle being certified. Respondent has only one independent contractor working at the facility. He has been clear with that technician regarding his expectations that all smog tests will be conducted in accordance with the bureau's rules and regulations.

16. This is the bureau's first disciplinary action against any of the licenses held by respondent McIntosh.

Costs

17. The bureau has incurred $10,388.83 in investigative costs, and $5,008.50 in legal costs, for a total of $15,397.33 in costs of investigation and enforcement. There is no challenge to the reasonableness of these costs. The parties have stipulated that respondent McIntosh and respondent Jamison have a joint and severable obligation to pay the bureau's costs in this proceeding.

LEGAL CONCLUSIONS

Cause for Discipline

Automotive Repair Dealer Registration

1. First Cause for Discipline (Finding 6): Cause for discipline of the automotive repair dealer registration issued to respondent McIntosh exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), for misleading statements made in the issuance of the electronic certificates of compliance set forth in Table One.

2. Second Cause for Discipline (Finding 6): Cause for discipline of the automotive repair dealer registration issued to respondent McIntosh exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for fraud associated with the issuance of the electronic certificates of compliance set forth in Table One without the performance of a bona fide smog inspection.

3. Ninth Cause for Discipline (Finding 7): Cause for discipline of the automotive repair dealer registration issued to respondent McIntosh exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), for misleading statements made in the issuance of the electronic certificates of compliance set forth in Table Two.

4. Tenth Cause for Discipline (Finding 7): Cause for discipline of the automotive repair dealer registration issued to respondent McIntosh exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for fraud associated with the issuance of the electronic certificates of compliance set forth in Table Two without the performance of a bona fide smog inspection.

5. Seventeenth Cause for Discipline (Finding 8): Cause for discipline of the automotive repair dealer registration issued to respondent McIntosh exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), for misleading statements made in the issuance of the electronic certificate of compliance for the 1996 Ford Explorer.

6. Eighteenth Cause for Discipline (Finding 8): It was not established that respondent McIntosh failed to provide the operator with a copy of the estimate for the 1996 Ford Explorer, as alleged. There is no cause for discipline of the automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(3).

7. Nineteenth Cause for Discipline (Finding 8): Cause for discipline of the automotive repair dealer registration issued to respondent McIntosh exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for fraud associated with the issuance of the electronic certificate of compliance for the 1996 Ford Explorer without the performance of a bona fide smog inspection.

8. Twentieth Cause for Discipline (Finding 8): It was not established that respondent McIntosh failed to provide the operator with a written estimate of the price for parts and labor for the 1996 Ford Explorer, as alleged. There is no cause for discipline of the automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

9. Twenty-Seventh Cause for Discipline (Finding 9): Cause for discipline of the automotive repair dealer registration issued to respondent McIntosh exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), for misleading statements made in the issuance of the electronic certificate of compliance for the 1998 Ford E-150 Van.

10. Twenty-Eighth Cause for Discipline (Finding 9): It was not established that respondent McIntosh failed to provide the operator with a copy of the estimate for the 1998 Ford E-150 Van, as alleged. There is no cause for discipline of the automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(3).

11. Twenty-Ninth Cause for Discipline (Finding 9): Cause for discipline of the automotive repair dealer registration issued to respondent McIntosh exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for fraud associated with the issuance of the electronic certificate of compliance for the 1998 Ford E-150 Van.

12. Thirtieth Cause for Discipline (Finding 9): It was not established that respondent McIntosh failed to provide the operator with a written estimate of the price for parts and labor for the 1998 Ford E-150 Van, as alleged. There is no cause for discipline of the automotive repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

Smog Check Test Only Station License

13. Third Cause for Discipline (Finding 6): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on August 21, 2007, in connection with the certificates of compliance and vehicles set forth in Table One, he violated the following provisions of the Health and Safety Code pertaining to the Motor Vehicle Inspection Program:

a. Section 44012, subdivision (f): failing to perform emission tests in accordance with bureau procedures.

b. Section 44015, subdivision (b): issuing electronic certificates of compliance without proper testing.

c. Section 44059: making false entries for electronic certificates.

14. Fourth Cause for Discipline (Finding 6): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on August 21, 2007, in connection with the certificates of compliance and vehicles set forth in Table One, he violated the following provisions of California Code of Regulations, title 16, pertaining to the Motor Vehicle Inspection Program:

a. Section 3340.24, subdivision (c): falsely or fraudulently issuing electronic certificates of compliances without bona fide smog inspections.

b. Section 3340.35, subdivision (c): issuing electronic certificates of compliance without testing in accordance with section 3340.42.

c. Section 3340.42: failing to conduct required smog tests and inspections.

15. Fifth Cause for Discipline (Finding 6): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit in connection with the issuance of the certificates of compliance and the vehicles set forth in Table One.

16. Eleventh Cause for Discipline (Finding 7): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on August 23, 2007, in connection with the certificates of compliance and vehicles set forth in Table Two, he violated the following provisions of the Health and Safety Code, pertaining to the Motor Vehicle Inspection Program:

a. Section 44012, subdivision (f): failing to perform emission tests in accordance with bureau procedures.

b. Section 44015, subdivision (b): issuing electronic certificates of compliance without proper testing.

c. Section 44059: making false entries for electronic certificates.

17. Twelfth Cause for Discipline (Finding 7): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on August 23, 2007, in connection with

the certificates of compliance and vehicles set forth in Table Two, he violated the following provisions of California Code of Regulations, title 16, pertaining to the Motor Vehicle Inspection Program:

a. Section 3340.24, subdivision (c): falsely or fraudulently issuing electronic certificates of compliances without bona fide smog inspections.

b. Section 3340.35, subdivision (c): issuing electronic certificates of compliance without testing in accordance with section 3340.42.

c. Section 3340.42: failing to conduct required smog tests and inspections.

18. Thirteenth Cause for Discipline (Finding 7): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit whereby someone else is injured, in connection with the issuance of the certificates of compliance for the vehicles set forth in Table Two. By issuing a certificate of compliance without performing a bona fide inspection, the People of the State of California have been deprived of the protection afforded by the Motor Vehicle Inspection Act.

19. Twenty-First Cause for Discipline (Finding 8): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on October 10, 2007, in connection with the 1996 Ford Explorer, he violated the following provisions of the Health and Safety Code pertaining to the Motor Vehicle Inspection Program:

a. Section 44012, subdivision (f): failing to perform emission tests in accordance with bureau procedures.

b. Section 44015, subdivision (b): issuing electronic certificates of compliance without proper testing.

c. Section 44059: making false entries for an electronic certificate.

20. Twenty-Second Cause for Discipline (Finding 8): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on October 10, 2007, in connection with the certificate of compliance issued on the 1996 Ford Explorer, he violated the following provisions of California Code of Regulations, title 16, pertaining to the Motor Vehicle Inspection Program:

a. Section 3340.24, subdivision (c): falsely or fraudulently issuing an electronic certificate of compliance without performing a bona fide smog inspection.

b. Section 3340.35, subdivision (c): issuing an electronic certificate of compliance without testing in accordance with section 3340.42.

c. Section 3340.42: failing to conduct the required smog test and inspection in accordance with the bureau's specifications.

21. Twenty-Third Cause for Discipline (Finding 8): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit whereby someone else is injured, in connection with the issuance of the certificate of compliance for the 1996 Ford Explorer. By issuing a certificate of compliance without performing a bona fide inspection, the People of the State of California have been deprived of the protection afforded by the Motor Vehicle Inspection Act.

22. Thirty-First Cause for Discipline (Finding 9): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on October 10, 2007, in connection with the 1998 Ford E-150 Van, he violated the following provisions of the Health and Safety Code pertaining to the Motor Vehicle Inspection Program:

a. Section 44012, subdivision (f): failing to perform emission tests in accordance with bureau procedures.

b. Section 44015, subdivision (b): issuing electronic certificates of compliance without proper testing.

c. Section 44059: making false entries for an electronic certificate.

23. Thirty-Second Cause for Discipline (Finding 9): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on October 10, 2007, in connection with the certificate of compliance issued on the 1998 Ford E-150 Van, he violated the following provisions of California Code of Regulations, title 16, pertaining to the Motor Vehicle Inspection Program:

a. Section 3340.24, subdivision (c): falsely or fraudulently issuing an electronic certificate of compliances without performing a bona fide smog inspection.

b. Section 3340.35, subdivision (c): issuing an electronic certificate of compliance without testing in accordance with section 3340.42.

c. Section 3340.42: failing to conduct the required smog test and inspection in accordance with the bureau's specifications.

24. Thirty-Third Cause for Discipline (Finding 9): Cause for discipline of the smog check test only station license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit whereby someone else is injured, in connection with the issuance of the certificate of compliance for the 1998 Ford E-150 Van. By issuing a certificate of compliance without performing a bona fide inspection, the People of the State of California have been deprived of the protection afforded by the Motor Vehicle Inspection Act.

Advanced Emission Specialist Technician License

25. Twenty-Fourth Cause for Discipline (Finding 8): Cause for discipline of the technician license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on October 10, 2007, in connection with the 1996 Ford Explorer, he violated the following provisions of the Health and Safety Code pertaining to the Motor Vehicle Inspection Program:

a. Section 44012, subdivision (f): failing to determine that all emission control devices and systems were installed and functioning correctly.

b. Section 44032: failing to perform tests of emission control devices and systems in accordance with section 44012.

c. Section 44059: entering false information into the EIS system.

26. Twenty-Fifth Cause for Discipline (Finding 8): Cause for discipline of the technician license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on October 10, 2007, in connection with the certificate of compliance issued on the 1996 Ford Explorer, he violated the following provisions of California Code of Regulations, title 16, pertaining to the Motor Vehicle Inspection Program:

a. Section 3340.30, subdivision (a): failing to inspect and test in accordance with Health and Safety Code section 44012.

b. Section 3340.41, subdivision (c): entering false information into the EIS system.

c. Section 3340.42: failing to conduct the required smog test and inspection in accordance with the bureau's specifications.

27. Twenty-Sixth Cause for Discipline (Finding 8): Cause for discipline of the technician license issued to respondent McIntosh exists pursuant to Health and Safety Code

section 44072.2, subdivision (d), for dishonesty, fraud or deceit whereby another is injured, in connection with the issuance of the certificate of compliance for the 1996 Ford Explorer. By issuing a certificate of compliance without performing a bona fide inspection, the People of the State of California have been deprived of the protection afforded by the Motor Vehicle Inspection Act.

28. Thirty-Fourth Cause for Discipline (Finding 9): Cause for discipline of the technician license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on October 10, 2007, in connection with the 1998 Ford E-150 Van, he violated the following provision of Health and Safety Code pertaining to the Motor Vehicle Inspection Program:

a. Section 44012, subdivision (f): failing to perform emission tests in accordance with bureau procedures.

b. Section 44032: failing to perform tests of emission control devices and systems in accordance with section 44012.

c. Section 44059: entering false information into the EIS system.

29. Thirty-Fifth Cause for Discipline (Finding 9): Cause for discipline of the technician license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on October 10, 2007, in connection with the certificate of compliance issued on the 1998 Ford E-150 Van, he violated the following provisions of California Code of Regulations, title 16, pertaining to the Motor Vehicle Inspection Program:

a. Section 3340.30, subdivision (a): failing to inspect and test vehicle in accordance with Health and Safety Code section 44012.

b. Section 3340.41, subdivision (c): entering false information into the EIS system.

c. Section 3340.42: failing to conduct the required smog test and inspection in accordance with the bureau's specifications.

30. Thirty-Sixth Cause for Discipline (Finding 9): Cause for discipline of the technician license issued to respondent McIntosh exists pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit whereby someone else is injured, in connection with the issuance of the certificate of compliance for the 1998 Ford E-150 Van. By issuing a certificate of compliance without performing a bona fide inspection, the People of the State of California have been deprived of the protection afforded by the Motor Vehicle Inspection Act.

Costs

31. Finding 17: Pursuant to Business and Professions Code section 125.3, the bureau may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. The bureau's costs of $15,397.33 are reasonable. Respondent McIntoch is liable for this amount, but his liability is joint and severable with respondent Jamison.

Penalty Determination

32. The bureau's guidelines for disciplinary penalties (Cal. Code Regs., tit. 16, § 3395.4) have been considered in reaching the determination of the appropriate penalty.

33. With respect to respondent McIntosh's smog inspection violations, this is his first disciplinary action; he has not received any prior warnings or citations from the bureau. He has accepted responsibility for his actions, he has offered no excuses, and has not attempted to shift the blame elsewhere. This proceeding has been a huge "wake-up" call for him. There are no factors in aggravation and he has initiated steps to minimize the reoccurrence of his errors. On this record, it has not been shown that the protection of the public requires revocation of respondent McIntosh's technician license.

34. With respect to respondent Jamison's clean-piping activities, the law is clear that as the licensee, respondent McIntosh is responsible for Jamison's activities. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295-297; *Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793; *Camacho v. Youde* (1979) 95 Cal.App.3d 161.) However, the courts have recognized that the relative culpability of the licensee is a factor to be considered. (*Rob Mac-Inc.* v. *Department of Motor Vehicles*, *supra*, 148 Cal.App.3d at p. 799.)

Respondent Jamison was the primary wrongdoer; he was the only one who clean-piped, and he kept his actions hidden from respondent McIntosh, knowing that he would not approve of them. Respondent Jamison was the only one who profited from the clean-piping. Respondent McIntosh set standards for the facility to be compliant with bureau rules and regulations, and respondent Jamison understood those standards. This is not to say that respondent McIntosh is completely without fault. In the highly regulated field of smog inspections, a licensee must be vigilant over his employees. Respondent McIntosh was not as vigilant as he should have been. He understands this, and he has made changes in his business operations. Respondent McIntosh accepted responsibility for his actions early in the process, has been open and honest with the bureau, and he is motivated to operate in compliance with bureau rules and regulations. He has asked bureau staff for suggestions for improvement. And, most importantly, respondent Jamison is no longer an employee.

Another factor to be considered is respondent McIntosh's record with the bureau. He has not been disciplined before by the bureau.

Finally, the purpose of this proceeding is not to punish the licensee but to protect the public. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) On this record it has not been shown that the protection of the public requires the revocation of the ARD registration or the smog check station license.

35. In assessing the appropriate penalty, the scope of the violations has been considered. It was argued that the violations as a whole give the bureau cause for concern about respondent McIntosh's suitability to hold any bureau license. But when viewed concretely, the technician violations are not indications of dishonesty but of negligence. And, but for the clean-piping incidents, these violations, as a first time occurrence, most probably would have been addressed through a citation. As such, these violations should not tip the balance toward revocation of the ARD registration or smog check station license.

36. The public will be adequately protected by the following order which places each license on probation, includes a lengthy 30-day period of suspension for the smog check station license, and requires that respondent McIntosh complete an 8-hour smog inspection class.

ORDER

1. Smog Check Test Only Station License number TG 240521 issued to Richmond Smog Test Only, William A. McIntosh, owner, is revoked. However, the revocation of the smog check station license is stayed and respondent shall be placed on probation for five (5) years upon the following terms and conditions:

a. Smog Check Test Only Station License Number TG 240521 shall be actually suspended for thirty (30) days.

b. Respondent shall post a prominent sign, provided by the bureau, indicating the beginning and the ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

c. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

d. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the bureau, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

e. Within 30 days of the effective date of this action, respondent shall report any financial interest which any partners, officers or owners of respondent facility

may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

f. Respondent shall provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

g. Respondent shall pay to the bureau the sum of $15,397.33. This obligation is a joint and severable one with Peter Byron Jamison. This obligation shall be offset by any payment made by respondent Jamison, or by any payment made by respondent McIntosh pursuant to conditions of probation imposed in this proceeding on any other license or registration held by him.

h. If an accusation is filed against respondent during the period of probation, the Director of the Department 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.

i. Should the Director of the Department of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Director may, after giving notice and an opportunity to be heard, revoke the smog check station license.

2. Automobile Repair Dealer Registration number AG 240521 issued to Richmond Smog Test Only, William A. McIntosh, owner, is permanently invalidated. However, the permanent invalidation of the ARD registration is stayed and respondent shall be placed on probation for five (5) years upon the following terms and conditions:

a. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the bureau, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 30 days of the effective date of this action, respondent shall report any financial interest which any partners, officers or owners of respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

d. Respondent shall provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

e. Respondent shall pay to the bureau the sum of $15,397.33. This obligation is a joint and severable one with respondent Peter Byron Jamison. This obligation shall be offset by any payment made by respondent Jamison, or by any payment made by respondent McIntosh pursuant to conditions of probation imposed in this proceeding on any other license or registration held by him.

f. If an accusation is filed against respondent during the period of probation, the Director of the Department 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.

g. Should the Director of the Department Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Director may, after giving notice and an opportunity to be heard, permanently invalidate the ARD registration.

3. Advanced Emission Specialist Technician License No. EA 147997 issued to William A. McIntosh is revoked. However, the revocation of the advanced emission specialist technician license is stayed and respondent shall be placed on probation for five (5) years upon the following terms and conditions:

a. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the bureau, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Respondent shall complete an 8-hour smog inspection training course within 30 days of the effective date of this decision.

d. Respondent shall pay to the bureau the sum of $15,397.33. This obligation is a joint and severable one with respondent Peter Byron Jamison. This obligation shall be offset by any payment made by respondent Jamison, or by any payment made by respondent McIntosh pursuant to conditions of probation imposed in this proceeding on any other license or registration held by him.

e. If an accusation is filed against respondent during the period 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.

f. Should the Director of the Department of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the

Director may, after giving notice and an opportunity to be heard, revoke the advanced emission specialist technician license.

DATED: January 20, 2009

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

EDMUND G. BROWN JR., Attorney General
of the State of California
FRANK H. PACOE
Supervising Deputy Attorney General
CHAR SACHSON, State Bar No. 161032
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5558
Facsimile: (415) 703-5480

Attorneys for Complainant

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

In the Matter of the Accusation Against: **RICHMOND SMOG TEST ONLY** 12923 San Pablo Avenue Richmond, California 94805 **WILLIAM A. MCINTOSH, OWNER** Automotive Repair Dealer Registration No. AG 240521 Smog Check Test Only Station License No. TG 240521, and **WILLIAM A. MCINTOSH** 2 Townsend Street, No. 4-206 San Francisco, California 94107 Advanced Emission Specialist Technician License No. EA 147997, and **PETER BYRON JAMISON** 909 23rd Street Richmond, California 94804 Advanced Emission Specialist Technician License No. EA 147508 Respondents.	Case No. 79/08-71 **ACCUSATION** **[SMOG CHECK]**

Sherry Mehl ("Complainant") alleges:

///

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

Automotive Repair Dealer Registration

2. On or about August 17, 2005, the Bureau issued Automotive Repair Dealer Registration Number AG 240521 ("registration") to William A. McIntosh ("Respondent McIntosh"), doing business as Richmond Smog Test Only. The registration will expire on July 31, 2008, unless renewed.

Smog Check Test Only Station License

3. On or about August 18, 2005, the Bureau issued Smog Check Test Only Station License Number TG 240521 ("station license") to Respondent McIntosh. The station license will expire on July 31, 2008, unless renewed.

Advanced Emission Specialist Technician License

4. On or about October 13, 2003, the Bureau issued Advanced Emission Specialist Technician License Number EA 147997 ("technician license") to Respondent McIntosh. The technician license will expire on November 30, 2009, unless renewed.

Advanced Emission Specialist Technician License

5. On or about August 18, 2003, the Bureau issued Advanced Emission Specialist Technician License Number EA 147508 ("technician license") to Peter Byron Jamison ("Respondent Jamison"). The technician license was inactive from October 31, 2005, to December 29, 2005. The technician license will expire on October 31, 2009, unless renewed.

STATUTORY PROVISIONS

6. Section 9884.7 of the Business and Professions Code ("Code"), states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct which constitutes fraud.

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

7. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

///

"I acknowledge notice and oral approval of an increase in the original estimated price.

_____
(signature or initials)"

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

9. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

13. Section 44072.8 of the Health and Safety Code states:

"When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

COST RECOVERY

14. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

SURVEILLANCE OPERATION - AUGUST 21, 2007

15. On or about August 21, 2007, the Bureau performed a videotaped surveillance at Respondent McIntosh's facility. The surveillance operation and information obtained from the Bureau's Vehicle Inspection Data ("VID") revealed that from 0901 hours to 1438 hours, Respondent Jamison performed three (3) smog inspections that resulted in the issuance of the electronic certificates of compliance for the vehicles set forth in Table One, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Jamison performed the smog inspections using the clean-piping[1] method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

Table One

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Cert Issued
8/21/2007 0901 hours to 0905 hours	1997 Ford Explorer Lic. No. 4SRW370	White Ford Van	MU396252C

1. "Clean-piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the smog check area during the time of the certification.

8/21/2007 1426 hours to 1430 hours	1999 Honda Civic Lic. No. 4GLM228	White Infinity 130	MU396261C
8/21/2007 1434 hours to 1438 hours	1992 Buick Century Lic. No. 3AXZ283	White Infinity 130	MU396262C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

16. Respondent McIntosh has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 21, 2007, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing the electronic certificates of compliance for the vehicles set forth in Table One, above, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean-piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent McIntosh has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about August 21, 2007, he committed acts which constitute fraud by issuing the electronic certificates of compliance for the vehicles set forth in Table One, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

18. Respondent McIntosh has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 21, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table One, above, he violated sections of that Code, as follows:

///

a. **Section 44012, subdivision (f):** Respondent McIntosh failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

b. **Section 44015, subdivision (b):** Respondent McIntosh issued the electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

c. **Section 44059:** Respondent McIntosh willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

19. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 21, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table One, above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent McIntosh falsely or fraudulently issued the electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c):** Respondent McIntosh issued the electronic certificates of compliance for those vehicles even though the vehicles had not been inspected in accordance with section 3340.42 of that Code.

c. **Section 3340.42:** Respondent McIntosh failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent McIntosh has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 21, 2007,

regarding the electronic certificates of compliance and the vehicles set forth in Table One, above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic certificates of compliance for those vehicles when, in fact, the vehicles had not been properly tested and inspected, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

21. Respondent Jamison has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 21, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table One, above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (f):** Respondent Jamison failed to determine that all emission control devices and systems required by law were installed and functioning correctly on those vehicles in accordance with test procedures.

b. **Section 44032:** Respondent Jamison failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicles had been clean-piped.

c. **Section 44059:** Respondent Jamison entered false information into the Emission Inspection System ("EIS") for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

22. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 21, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table One, above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent Jamison failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.

b. **Section 3340.41, subdivision (c):** Respondent Jamison entered false information into the EIS for the electronic certificates of compliance by entering vehicle identification information or emission control information for vehicles other than the vehicles being tested.

c. **Section 3340.42:** Respondent Jamison failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent Jamison has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 21, 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic certificates of compliance for the vehicles set forth in Table One, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SURVEILLANCE OPERATION - AUGUST 23, 2007

24. On or about August 23, 2007, the Bureau performed a videotaped surveillance at Respondent McIntosh's facility. The surveillance operation and information obtained from the Bureau's VID revealed that from 1225 hours to 1511 hours, Respondent Jamison performed seven (7) smog inspections that resulted in the issuance of the electronic certificates of compliance for the vehicles set forth in Table Two, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Jamison performed the smog inspections using the clean-piping method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

///

///

Table Two

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Cert Issued
8/23/2007 1225 hours to 1228 hours	1990 Acura Legend Vin No. JH4KA4669LC036604	Red Jaguar XJ6	MU396277C
8/23/2007 1248 hours to 1252 hours	1998 Ford F-Series Lic. No. 7E17177	Red Jaguar XJ6	MU396278C
8/23/2007 1258 hours to 1303 hours	1991 GMC C2500 Sierra Lic. No. 4E73961	Red Jaguar XJ6	MU396279C
8/23/2007 1327 hours to 1335 hours	1995 Mitsubishi Eclipse Lic. No. 4FNK753	Red Jaguar XJ6	MU396280C
8/23/2007 1404 hours to 1430 hours	1996 Oldsmobile Achieva Lic. No. 5UTY982	Infinity 130	MU396281C
8/23/2007 1452 hours to 1458 hours	1989 Nissan 240SX Lic. No. 3SJZ614	Red Nissan pickup truck	MU396283C
8/23/2007 1508 hours to 1511 hours	1994 Mazda 929 Lic. No. 3GPR494	Red Nissan pickup truck	MU396285C

NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

25. Respondent McIntosh has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 23, 2007, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading by issuing the electronic certificates of compliance for the vehicles set forth in Table Two, above, certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean-piped.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

26. Respondent McIntosh has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about August 23, 2007, he committed acts which constitute fraud by issuing the electronic certificates of compliance for the vehicles set forth in Table Two, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

ELEVENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

27. Respondent McIntosh has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 23, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table Two, above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (f):** Respondent McIntosh failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

b. **Section 44015, subdivision (b):** Respondent McIntosh issued the electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

c. **Section 44059:** Respondent McIntosh willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

TWELFTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

28. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 23, 2007, regarding the

///

electronic certificates of compliance and the vehicles set forth in Table Two, above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent McIntosh falsely or fraudulently issued the electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles as required by Health and Safety Code section 44012.

b. **Section 3340.35, subdivision (c):** Respondent McIntosh issued the electronic certificates of compliance for those vehicles even though the vehicles had not been inspected in accordance with section 3340.42 of that Code.

c. **Section 3340.42:** Respondent McIntosh failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

29. Respondent McIntosh has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 23, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table Two, above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic certificates of compliance for those vehicles when, in fact, the vehicles had not been properly tested and inspected, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

30. Respondent Jamison has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 23, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table Two, above, he violated sections of that Code, as follows:

///

///

a. **Section 44012, subdivision (f):** Respondent Jamison failed to determine that all emission control devices and systems required by law were installed and functioning correctly on those vehicles in accordance with test procedures.

b. **Section 44032:** Respondent Jamison failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicles had been clean-piped.

c. **Section 44059:** Respondent Jamison entered false information into the EIS for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

FIFTEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

31. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 23, 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table Two, above, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent Jamison failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.

b. **Section 3340.41, subdivision (c):** Respondent Jamison entered false information into the EIS for the electronic certificates of compliance by entering vehicle identification information or emission control information for vehicles other than the vehicles being tested.

c. **Section 3340.42:** Respondent Jamison failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

32. Respondent Jamison has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 23, 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by

issuing the electronic certificates of compliance for the vehicles set forth in Table Two, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION - OCTOBER 10, 2007

33. On October 10, 2007, a Bureau undercover operator using the alias Curt Olinger ("operator") drove a Bureau-documented 1996 Ford Explorer, California License Plate No. 3PZE600, to Respondent's facility for a smog inspection. The vehicle could not pass a smog inspection because the vehicle's positive crankcase ventilation system ("PCV") was missing. Respondent McIntosh performed the smog inspection and issued electronic Certificate of Compliance No. VL147782C, certifying that he had tested and inspected the 1996 Ford Explorer and that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle's PCV system was missing.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

34. Respondent McIntosh has subjected his registration to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that on or about October 10, 2007, he made or authorized statements which he knew, or in the exercise of reasonable care he should have known to be untrue or misleading, by issuing electronic Certificate of Compliance No. VL147782C for the 1996 Ford Explorer, certifying that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle's PCV system was missing.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide a Copy of a Signed Document)

35. Respondent McIntosh has subjected his registration to discipline under Code section 9884.7, subdivision (a)(3), in that on or about October 10, 2007, he failed to provide the operator with a copy of the estimate as soon as the operator signed the document.

NINETEENTH CAUSE FOR DISCIPLINE

(Fraud)

36. Respondent McIntosh has subjected his registration to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that on or about October 10, 2007, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. VL147782C for the 1996 Ford Explorer without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

37. Respondent McIntosh has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about October 10, 2007, he failed to comply with the provisions of Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for a specific job.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

38. Respondent McIntosh has subjected his station license to discipline pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about October 10, 2007, regarding the 1996 Ford Explorer, he failed to comply with the following sections of that Code:

a. **Section 44012, subdivision (f)**: Respondent McIntosh failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the department.

b. **Section 44015, subdivision (b)**: Respondent McIntosh issued electronic Certificate of Compliance No. VL147782C for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

///

///

c. **Section 44059:** Respondent McIntosh willfully made false entries for electronic Certificate of Compliance No. VL147782C by certifying that the vehicle had been inspected as required when, in fact, it had not.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

39. Respondent McIntosh has subjected his station license to discipline pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about October 10, 2007, regarding the 1996 Ford Explorer, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent McIntosh falsely or fraudulently issued electronic Certificate of Compliance No. VL147782C for the vehicle, in that the vehicle could not pass the visual portion of the smog inspection because the vehicle's PCV system was missing.

b. **Section 3340.35, subdivision (c):** Respondent McIntosh issued electronic Certificate of Compliance No. VL147782C for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

c. **Section 3340.42:** Respondent McIntosh failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

40. Respondent McIntosh has subjected his station license to discipline pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about October 10, 2007, Respondent committed acts involving dishonesty, fraud or deceit whereby another is injured by issuing electronic Certificate of Compliance No. VL147782C for the 1996 Ford Explorer without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

41. Respondent McIntosh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about October 10, 2007, regarding electronic Certificate of Compliance No. VL147782C for the 1996 Ford Explorer, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (f):** Respondent McIntosh failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the vehicle in accordance with test procedures.

b. **Section 44032:** Respondent McIntosh failed to perform tests of the emission control devices and systems on the vehicle in accordance with section 44012 of that Code.

c. **Section 44059:** Respondent McIntosh entered false information into the EIS for the electronic certificate of compliance by certifying that the vehicle had been inspected as required when, in fact, it had not.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

42. Respondent McIntosh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about October 10, 2007, regarding electronic Certificate of Compliance No. VL147782C for the 1996 Ford Explorer, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent McIntosh failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

b. **Section 3340.41, subdivision (c):** Respondent McIntosh entered false information into the EIS for the electronic certificate of compliance by entering "pass" for the PCV system when, in fact, the vehicle's PCV system was missing.

c. **Section 3340.42:** Respondent McIntosh failed to conduct the required smog tests and inspections on the vehicle in accordance with the Bureau's specifications.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

43. Respondent McIntosh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about October 10, 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. VL147782C for the 1996 Ford Explorer without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION - OCTOBER 10, 2007

44. On October 10, 2007, a Bureau undercover operator using the alias Curt Olinger ("operator") drove a Bureau-documented 1998 Ford E-150 Van, California License Plate No. 5R77178 to Respondent McIntosh's facility for a smog inspection. The vehicle could not pass a smog inspection because the vehicle's PCV system was missing. Respondent McIntosh performed the smog inspection and issued electronic Certificate of Compliance No. VL147783C, certifying that he had tested and inspected the 1998 Ford E-150 Van and that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle's PCV system was missing.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

45. Respondent McIntosh has subjected his registration to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that on or about October 10, 2007, Respondent made or authorized statements which he knew, or in the exercise of reasonable care he should have known to be untrue or misleading by issuing electronic Certificate of Compliance No. VL147783C for the 1998 Ford E-150 Van, certifying that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle's PCV system was missing.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Failure to Provide a Copy of a Signed Document)

46. Respondent McIntosh has subjected his registration to discipline under Code section 9884.7, subdivision (a)(3), in that on or about October 10, 2007, he failed to provide the operator with a copy of the estimate as soon as the operator signed the document.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Fraud)

47. Respondent McIntosh has subjected his registration to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that on or about October 10, 2007, he committed acts which constitute fraud by issuing electronic Certificate of Compliance No. VL147783C for the 1998 Ford E-150 Van without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRTIETH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

48. Respondent McIntosh has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about October 10, 2007, he failed to comply with the provisions of Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for a specific job.

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

49. Respondent McIntosh has subjected his station license to discipline pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about October 10, 2007, regarding the 1998 Ford E-150 Van, he failed to comply with the following sections of that Code:

a. **Section 44012, subdivision (f):** Respondent McIntosh failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the department.

///

b. **Section 44015, subdivision (b)**: Respondent McIntosh issued electronic Certificate of Compliance No. VL147783C for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

c. **Section 44059:** Respondent McIntosh willfully made false entries for electronic Certificates of Compliance No. VL147783C by certifying that the vehicle had been inspected as required when, in fact, it had not.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

50. Respondent McIntosh has subjected his station license to discipline pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about October 10, 2007, regarding the 1998 Ford E-150 Van, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent McIntosh falsely or fraudulently issued electronic Certificate of Compliance No. VL147783C for the vehicle, in that the vehicle could not pass the visual portion of the smog inspection because the vehicle's PCV system was missing.

b. **Section 3340.35, subdivision (c)**: Respondent McIntosh issued electronic Certificate of Compliance No. VL147783C for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

c. **Section 3340.42**: Respondent McIntosh failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

THIRTY-THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

51. Respondent McIntosh has subjected his station license to discipline pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about October 10, 2007, he committed acts involving dishonesty, fraud or deceit whereby another is

injured by issuing electronic Certificate of Compliance No. VL147783C for the 1998 Ford E-150 Van without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

52. Respondent McIntosh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about October 10, 2007, regarding electronic Certificate of Compliance No. VL147783C for the 1998 Ford E-150 Van, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (f):** Respondent McIntosh failed to determine that all emission control devices and systems required by law were installed and functioning correctly on that vehicle in accordance with test procedures.

b. **Section 44032:** Respondent McIntosh failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

c. **Section 44059:** Respondent McIntosh entered false information into the EIS for the electronic certificate of compliance by certifying that the vehicle had been inspected as required when, in fact, it had not.

THIRTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

53. Respondent McIntosh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about October 10, 2007, regarding electronic Certificate of Compliance No. VL147783C for the 1998 Ford E-150 Van, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent McIntosh failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

///

b. **Section 3340.41, subdivision (c):** Respondent McIntosh entered false information into the EIS for the electronic certificate of compliance by entering "pass" for the PCV system when, in fact, the vehicle's PCV system was missing.

c. **Section 3340.42:** Respondent McIntosh failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

THIRTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

54. Respondent McIntosh has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about October 10, 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. VL147783C for the 1998 Ford E-150 Van without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

55. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by William A. McIntosh, doing business as Richmond Smog Test Only, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

56. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TG 240521, issued to William A. McIntosh, doing business as Richmond Smog Test Only, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

57. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 147997, issued to William A. McIntosh, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

58. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 147508, issued to Peter Byron Jamison, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number AG 240521, issued to William A. McIntosh, doing business as Richmond Smog Test Only;

2. Temporarily or permanently invaliding any other automotive repair dealer registration issued to William A. McIntosh, doing business as Richmond Smog Test Only;

3. Revoking or suspending Smog Check Test Only Station License Number TG 240521, issued to William A. McIntosh, doing business as Richmond Smog Test Only;

4. Revoking or suspending any additional license issued under this chapter in the name of William A. McIntosh, doing business as Richmond Smog Test Only;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 147997, issued to William A. McIntosh;

6. Revoking or suspending any additional license issued under this chapter in the name of William A. McIntosh;

7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 147508, issued to Peter Byron Jamison;

8. Revoking or suspending any additional license issued under this chapter in the name of Peter Byron Jamison;

///

///

///

///

9. Ordering William A. McIntosh and Peter Byron Jamison to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

10. Taking such other and further action as deemed necessary and proper.

DATED: 4-16-08

SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

03562110SF2008400256
RichmondSmog.Acc.wpd
ps (3/6/08)