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7

8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/08-71

13 **RICHMOND SMOG TEST ONLY**  
12923 San Pablo Avenue  
14 Richmond, California 94805  
**WILLIAM A. MCINTOSH, OWNER**  
15 Automotive Repair Dealer Registration  
No. AG 240521  
Smog Check Test Only Station License  
No. TG 240521,

**A C C U S A T I O N**  
**[SMOG CHECK]**

16 and

17 **WILLIAM A. MCINTOSH**  
18 2 Townsend Street, No. 4-206  
San Francisco, California 94107  
19 Advanced Emission Specialist Technician  
License No. EA 147997,

20 and

21 **PETER BYRON JAMISON**  
22 909 23rd Street  
Richmond, California 94804  
23 Advanced Emission Specialist Technician  
License No. EA 147508

24 Respondents.  
25

26  
27 Sherry Mehl ("Complainant") alleges:

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1 PARTIES

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

4 **Automotive Repair Dealer Registration**

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

9 **Smog Check Test Only Station License**

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

13 **Advanced Emission Specialist Technician License**

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

17 **Advanced Emission Specialist Technician License**

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

22 STATUTORY PROVISIONS

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

25 (a) The director, where the automotive repair dealer cannot show there was  
26 a bona fide error, may refuse to validate, or may invalidate temporarily or  
27 permanently, the registration of an automotive repair dealer for any of the  
28 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 (1) Making or authorizing in any manner or by any means whatever any  
2 statement written or oral which is untrue or misleading, and which is known, or  
3 which by the exercise of reasonable care should be known, to be untrue or  
4 misleading.

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

7 (4) Any other conduct which constitutes fraud.

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

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

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

23 7. Code section 9884.9 states, in pertinent part:

24 (a) The automotive repair dealer shall give to the customer a written  
25 estimated price for labor and parts necessary for a specific job. No work shall be  
26 done and no charges shall accrue before authorization to proceed is obtained from  
27 the customer. No charge shall be made for work done or parts supplied in excess  
28 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:

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

3 \_\_\_\_\_  
4 (signature or initials)"

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

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

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

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

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

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

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

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

28 (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.

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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 licensee 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<sup>1</sup> 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**

<b>Date and Test Times</b>	<b>Vehicle Certified</b>	<b>Vehicle Actually Tested</b>	<b>Cert Issued</b>
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.

1 2 3	8/21/2007 1426 hours to 1430 hours	1999 Honda Civic Lic. No. 4GLM228	White Infinity 130	MU396261C
4 5	8/21/2007 1434 hours to 1438 hours	1992 Buick Century Lic. No. 3AXZ283	White Infinity 130	MU396262C

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Misleading Statements)**

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

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud)**

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

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Violation of the Motor Vehicle Inspection Program)**

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

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

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

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

10 **FOURTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Dishonesty, Fraud or Deceit)**

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

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

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Motor Vehicle Inspection Program)**

8 21. Respondent Jamison has subjected his technician license to discipline  
9 under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 21,  
10 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table One,  
11 above, he violated sections of that Code, as follows:

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

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

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

21 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

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



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.



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

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

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

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

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud or Deceit)**

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

21 **FOURTEENTH CAUSE FOR DISCIPLINE**

22 **(Violations of the Motor Vehicle Inspection Program)**

23 30. Respondent Jamison has subjected his technician license to discipline  
24 under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 23,  
25 2007, regarding the electronic certificates of compliance and the vehicles set forth in Table Two,  
26 above, he violated sections of that Code, as follows:

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

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

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

10 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

24 **SIXTEENTH CAUSE FOR DISCIPLINE**

25 **(Dishonesty, Fraud or Deceit)**

26 32. Respondent Jamison has subjected his technician license to discipline  
27 under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 23,  
28 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by

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

5 **UNDERCOVER OPERATION - OCTOBER 10, 2007**

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

15 **SEVENTEENTH CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

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

24 **EIGHTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Provide a Copy of a Signed Document)**

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

1 NINETEENTH CAUSE FOR DISCIPLINE

2 (Fraud)

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

9 TWENTIETH CAUSE FOR DISCIPLINE

10 (Failure to Comply with the Code)

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

15 TWENTY-FIRST CAUSE FOR DISCIPLINE

16 (Violations of the Motor Vehicle Inspection Program)

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

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

23 b. Section 44015, subdivision (b): Respondent McIntosh issued electronic  
24 Certificate of Compliance No. VL147782C for the vehicle without properly testing and  
25 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section  
26 44012.

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

4 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

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

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

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

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

20 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

21 **(Dishonesty, Fraud or Deceit)**

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



1 TWENTY-SIXTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 43. Respondent McIntosh has subjected his technician license to discipline  
4 under Health and Safety Code section 44072.2, subdivision (d), in that on or about October 10,  
5 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured by  
6 issuing electronic Certificate of Compliance No. VL147782C for the 1996 Ford Explorer without  
7 performing a bona fide inspection of the emission control devices and systems on that vehicle,  
8 thereby depriving the People of the State of California of the protection afforded by the Motor  
9 Vehicle Inspection Program.

10 UNDERCOVER OPERATION - OCTOBER 10, 2007

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

20 TWENTY-SEVENTH CAUSE FOR DISCIPLINE

21 (Untrue or Misleading Statements)

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

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**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.

///

1                   b.     Section 44015, subdivision (b): Respondent McIntosh issued electronic  
2 Certificate of Compliance No. VL147783C for the vehicle without properly testing and  
3 inspecting the vehicle to determine if it was in compliance with Health & Safety Code section  
4 44012.

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

8   **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

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

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

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

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

24   **THIRTY-THIRD CAUSE FOR DISCIPLINE**

25   **(Dishonesty, Fraud or Deceit)**

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

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

5 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

6 **(Violations of the Motor Vehicle Inspection Program)**

7 52. Respondent McIntosh has subjected his technician license to discipline  
8 under Health and Safety Code section 44072.2, subdivision (a), in that on or about October 10,  
9 2007, regarding electronic Certificate of Compliance No. VL147783C for the 1998 Ford E-150  
10 Van, he violated sections of that Code, as follows:

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

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

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

20 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

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

22 53. Respondent McIntosh has subjected his technician license to discipline  
23 under Health and Safety Code section 44072.2, subdivision (c), in that on or about October 10,  
24 2007, regarding electronic Certificate of Compliance No. VL147783C for the 1998 Ford E-150  
25 Van, he violated sections of the California Code of Regulations, title 16, as follows:

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

28 ///

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

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

6                                   **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

7   **(Dishonesty, Fraud or Deceit)**

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

15   **OTHER MATTERS**

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

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

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



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

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

5 DATED: 4-16-08  
6

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8   
9 SHERRY MEHL  
10 Chief  
11 Bureau of Automotive Repair  
12 Department of Consumer Affairs  
13 State of California  
14 Complainant  
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