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

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12 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Case No. 79/12-24

13 **RICHMOND SMOG TEST ONLY**  
12923 San Pablo Avenue  
14 Richmond, CA 94805  
15 **WILLIAM ANTHONY MCINTOSH, OWNER**  
Automotive Repair Dealer Registration No. ARD  
240521  
16 Smog Check Test Only Station License No.  
TC240521

ACCUSATION AND PETITION TO  
REVOKE PROBATION  
SMOG CHECK

17 and

18 **WILLIAM ANTHONY MCINTOSH**  
19 573 Elsie Avenue  
San Leandro, CA 94577  
20 Advanced Emission Specialist Technician License  
No. EA 147997

21 Respondents.

22  
23 Complainant alleges:

24 **PARTIES**

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



STATUTORY PROVISIONS

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

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

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

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

15 (4) Any other conduct which constitutes fraud.

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

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

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

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

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

6 \_\_\_\_\_  
7 (signature or initials)"

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

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

16 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
17 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
18 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  
21 against a license as provided in this article if the licensee, or any partner, officer, or  
director thereof, does any of the following:

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

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

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

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

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

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

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

#### 7 COST RECOVERY

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

#### 12 ACCUSATION

#### 13 UNDERCOVER OPERATION NO. 1 – JUNE 7, 2010

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

#### 22 FIRST CAUSE FOR DISCIPLINE

#### 23 (Untrue or Misleading Statements)

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

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

3 **SECOND CAUSE FOR DISCIPLINE**

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

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

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Fraud)**

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

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Provide a Written Estimate Prior to Repairs)**

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

22 **FIFTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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

12 **SIXTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 22. Respondent has subjected his station license to disciplinary action pursuant to Health  
4 and Safety Code section 44072.2, subdivision (d), in that on or about June 7, 2010, regarding the  
5 1995 Chevrolet Impala, he committed acts involving dishonesty, fraud or deceit whereby another  
6 was injured by issuing electronic Certificate of Compliance No. NU351645 without performing a  
7 bona fide inspection of the emission control devices and systems on that vehicle, thereby  
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
9 Inspection Program.

10 EIGHTH CAUSE FOR DISCIPLINE

11 (Violations of the Motor Vehicle Inspection Program)

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

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

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

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

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

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1 NINTH CAUSE FOR DISCIPLINE

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

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

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

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

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

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

18 TENTH CAUSE FOR DISCIPLINE

19 (Dishonesty, Fraud or Deceit)

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

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

5 **FOURTEENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Provide a Written Estimate Prior to Repairs)**

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

11 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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

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1 SIXTEENTH CAUSE FOR DISCIPLINE

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

3 32. Respondent has subjected his station license to disciplinary action pursuant to Health  
4 and Safety Code section 44072.2, subdivision (c), in that on or about June 7, 2010, regarding the  
5 1992 Oldsmobile Bravada, he violated sections of the California Code of Regulations, title 16, as  
6 follows:

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

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

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

16 SEVENTEENTH CAUSE FOR DISCIPLINE

17 (Dishonesty, Fraud or Deceit)

18 33. Respondent has subjected his station license to disciplinary action pursuant to Health  
19 and Safety Code section 44072.2, subdivision (d), in that on or about June 7, 2010, regarding the  
20 1992 Oldsmobile Bravada, he committed acts involving dishonesty, fraud or deceit whereby  
21 another was injured by issuing electronic Certificate of Compliance No. NU369051 without  
22 performing a bona fide inspection of the emission control devices and systems on that vehicle,  
23 thereby depriving the People of the State of California of the protection afforded by the Motor  
24 Vehicle Inspection Program.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

2 (Violations of the Motor Vehicle Inspection Program)

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

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

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

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

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

17 **NINETEENTH CAUSE FOR DISCIPLINE**

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

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

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

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

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

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

8 **TWENTIETH CAUSE FOR DISCIPLINE**

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

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

17 **PETITION TO REVOKE PROBATION**

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

20 38. Grounds exist to revoke the probation and reimpose the order of revocation of  
21 Respondent's Automotive Repair Dealer Registration No. ARD 240521 (formerly AG 240521),  
22 Smog Check Test Only Station License No. TC 240521 (formerly TG 240521), and Advanced  
23 Emission Specialist Technician License No. EA 147997, in that Respondent failed to comply with  
24 all statutes, regulations, and rules governing estimates and inspections as required by Terms 1c,  
25 2a, and 3a of the terms of the probation under Decision and Order in Accusation No. 79/08-71, as  
26 set forth in paragraphs 15 through 36 of the accusation above.

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1 OTHER MATTERS

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

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

12 PRAYER

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

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

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

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

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

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

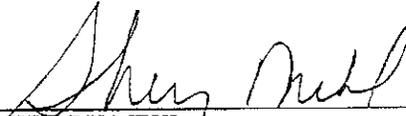
27 6. Revoking or suspending any additional license issued under Chapter 5 of the Health  
28 and Safety Code in the name of William Anthony McIntosh;

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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 McIntosh 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



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MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings

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7

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

11 In the Matter of the Accusation Against:

Case No. 79/08-71

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

**ACCUSATION**  
**[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.

27 Sherry Mehl ("Complainant") alleges:

28 ///

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 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<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 TENTH CAUSE FOR DISCIPLINE

2 (Fraud)

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

9 ELEVENTH CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

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

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

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

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

24 TWELFTH CAUSE FOR DISCIPLINE

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

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

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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.

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**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.

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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.





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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.

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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.

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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.



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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

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