

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

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

**RICHMOND SMOG TEST ONLY,
WILLIAM ANTHONY MCINTOSH, Owner**

and

WILLIAM ANTHONY MCINTOSH

Respondents.

Case No. 79/12-24

OAH No. 2012010885

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 except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors on page 2, line 2, and paragraph 3, line 4, Factual Findings, of the Proposed Decision are corrected as follows:

The "Advanced Emission Specialist Technician license number AEA 147997" is corrected to read "Advanced Emission Specialist Technician License Number EA 147997." In addition, the expiration date of this license indicated on page 2, line 2, is corrected to read "November 30, 2013."

This Decision shall become effective 12/7/12

DATED: October 24, 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

Administrative Law Judge Paul Slavit, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 18, 2012.

Timothy J. McDonough, Deputy Attorney General, represented complainant Bureau of Automotive Repair.

Respondent William Anthony McIntosh represented himself.

The case was submitted on July 18, 2012.

FACTUAL FINDINGS

1. Sherry Mehl, Chief of the Bureau of Automotive Repair, Department of Consumers Affairs (bureau) brought this accusation in her official capacity. Subsequently, John Wallach succeeded Mehl as chief of the bureau, and at the time of the hearing, the petition was amended accordingly.

2. Respondent William Anthony McIntosh, doing business as Richmond Smog Test Only, was registered as an Automotive Repair Dealer under registration number ARD 240521 in 2005. The license will expire on July 31, 2012, unless renewed.

Respondent, individually and doing business as Richmond Smog Test Only also is licensed as a Smog Check Test Only Station under license number TC240521 issued on August 19, 2005. The license will expire on July 31, 2012, unless renewed.

Respondent individually was licensed as an Advanced Emission Specialist under license number AEA 147997 in 2003. The license will expire on November 20, 2013, unless renewed.

Prior Disciplinary History

3. On March 9, 2009, pursuant to decision and order in accusation no. 79/08-17, the bureau revoked respondent's automotive repair dealer registration number ARD 240521; smog check test only station license number TC240521; and advanced emission specialist license number AEA 147997. The revocations were stayed, and respondent was placed on probation for five years, under terms and conditions including that he comply with all statutes, regulations and rules governing automobile inspections, estimates and repairs.

4. The facts underlying the revocations were that on ten occasions in August 2007, the bureau conducted undercover operations during which they observed an employee of respondent's business issue certificates of compliance for vehicles that the bureau had modified so that they could not pass smog certification. In those instances, the employee had "clean piped" the vehicles in order to issue the smog certificates—i.e., the employee used the tailpipe emissions from a vehicle that could pass the smog test to register the emissions of a vehicle that could not pass the test.

As a further basis for discipline, in two other bureau undercover operations respondent personally issued certificates of compliance on vehicles that could not pass smog inspection because the PCV valve on the vehicles had been removed. As a result, the vehicle could not pass the visual inspection part of the smog certification test. Respondent failed to conduct the visual inspection, but issued certificates of compliance.

5. Matthew Rodriguez is a Program Representative II specialist for the bureau. He oversaw the two undercover operations, worked with the undercover officer in this investigation, and prepared an investigative report based on the findings of the operations.

Rodriguez first encountered respondent and his shop in 2007, and was familiar with the circumstances that led to the previous discipline. On March 11, 2010, after respondent was placed on probation, he held a probation conference with him. At the conference, he reviewed with respondent the terms and conditions of the probation order, and provided respondent with copies of state smog regulations, the smog check procedures manual, and smog technician's guide. The technician's guide includes information about visual and other inspection procedures and how to conduct them properly.

In addition, Rodriguez described for respondent the bureau's expectations for his compliance with applicable laws and regulations, as well as the terms and conditions of his probation. He specifically told respondent that the bureau would be following up regarding his compliance, which could include inspections of his business and undercover operations.

At the conference, respondent offered seven steps he intended to take to improve his business and its compliance with laws and regulations. Respondent's proposals addressed better supervision and oversight of his shop and its employees.

The Bureau's Undercover Operation - 1995 Chevrolet Impala

6. David W. Mummert, Program Representative II, specialist; David Warmuth, Program Representative I, and Joseph Cheung, Program Representative II testified for the bureau concerning the two undercover operations that led to this accusation and petition for revocation.

7. During the period May 13-May 18, 2010, Mummert inspected and documented the condition of a bureau owned 1995 Chevrolet Impala. He first determined that the car had a properly installed and operating emissions control system in place, and otherwise was running properly. After documenting its original condition, Mummert then intentionally removed the PCV valve from the emissions control system.

8. Mummert explained that a smog certification test consists of three parts—the tail pipe emissions test, visual inspection, and a functional test of the engine. The PCV valve is a required part of the emissions control system on the car. If the valve is not present, the car will not pass the visual inspection portion of the smog test, and a smog certificate legally cannot be issued.

9. Thereafter, on June 7, 2010, the Impala was provided to Cheung, who brought the car to respondent's smog test center. Cheung met with respondent personally and requested a smog test for the car. Cheung was presented with a work order, and told to fill in his personal information and sign the work order. He did so, but respondent did not provide him with a copy of the work order. After respondent performed the smog test on the car, he passed the car and issued a smog certificate of compliance, despite the absence of the PCV valve.

10. Before and after the car was brought to respondent's shop, it was inspected by Mummert, and the condition of the engine and smog system documented, including photographs of the engine compartment and emissions control system.

The Bureau's Undercover Operations - 1992 Oldsmobile Bravada

11. During the period May 24-May 27, 2010, Warmuth inspected and documented the condition of a bureau owned 1992 Oldsmobile Bravada. He determined that the car had a properly installed and operating emissions control system in place, and otherwise was running properly. After documenting the vehicle's original condition, Warmuth adjusted the ignition timing to 12 degrees before top dead center. The manufacturer's specification for the Bravada's timing is zero degrees at top dead center, so that the ignition timing now was out of compliance. If a car's timing is out of specifications, it will not pass the functional portion of the smog test, and cannot receive a valid smog certification.

Warmuth explained that in order to adjust the timing back to its proper setting, the distributor would need to be rotated to the correct position. To determine whether that adjustment was done, he placed a tamper seal—essentially a small amount of epoxy—at the base of the distributor. If the distributor were rotated, the seal would break; if no adjustment of the distributor was performed, the seal would remain unbroken and in place.

12. On June 7, 2010, Cheung was provided with the Bravada. He brought this car to respondent's smog test center. Cheung met with respondent personally and requested a smog test for the car. As before, Cheung was presented with a work order and told to fill in his personal information and sign the work order. He did so, but respondent did not provide him with a copy of the work order. After respondent performed the smog test on the car, he passed the car and issued a smog certificate of compliance.

13. Cheung returned the vehicle to the bureau's facility, where an inspection was performed. The tamper seal on the distributor remained intact, and a functional test determined that the engine ignition timing was still out of compliance at 12 degrees before top dead center.

As was the case with the Chevrolet Impala, the Bravada was inspected both before and after the car was brought to respondent's shop; and the condition of the engine and smog system were documented, including photographs of the engine compartment.

Respondent's Contentions

14. Respondent has been licensed as a smog emissions specialist since 2003. He currently owns and operates his business ten hours per day, Monday through Friday, and seven hours on Saturday. He acknowledged that he is on probation for the previous violations, and that two of the matters that resulted in probation were undercover operations in which he was involved.

15. Respondent admitted the two violations alleged in this accusation, and characterized them as mistakes, not intentional acts. He does not remember the two undercover vehicles or Cheung's visits to the shop. In any event, he stated that he cannot justify missing the PCV valve and ignition timing problems. Respondent suggested that considering the many tests and inspections he performs in a given day, it is always possible to make mistakes. He further explained that when working with many cars at a time, it is easy to become complacent and begin operating by rote or mechanically. Although the bureau provides an inspection checklist in its guidebook, respondent does not use it when he conducts inspections, relying on his own experience and knowledge.

16. Respondent stated that Cheung was, in fact, provided with a copy of the signed work order, because respondent handed Cheung a clipboard with the original and copies of the work order on them, and that Cheung was free to take a copy once he had signed the original. Respondent explained that he personally did not hand a copy to Cheung, but that one was available to him once he had signed.

17. Respondent stated that he generally does conduct a visual test, and that on occasion he will see something obvious about a customer's car that will prevent it from passing the smog test. In some instances, he will inform the customer that the car has a problem, and is not likely to pass smog. He will decline to test the vehicle until the customer has had the opportunity to take the car to a mechanic first.

18. Discussing smog certification testing, respondent acknowledged that it is a three part process. However, he seems focused on the tailpipe emission test as the most important of the three parts. Respondent stated that he uses the outcome of the tailpipe emissions test as a guide to whether the vehicle will pass the smog certification.

He argued that if the vehicle passes the tailpipe emissions test, it is not an environmental hazard; and that the visual and functional aspects are more "procedural." In his view, a vehicle that passes the tailpipe emissions test is not "environmentally unfit" to be on the road, even if, as in this case, the PCV valve is not present, or the engine timing is not per manufacturer's specifications.

19. With reference to the proposed revocation of his licenses, respondent argued that his current probationary status is largely due to the acts of a renegade employee who was clean piping cars without respondent's knowledge or participation. The probation, in turn, leaves him subject to harsher scrutiny and discipline. He stated that if the two current incidents occurred in the absence of his probation, they probably would warrant revocation or severe discipline.

He further stated that the bureau's policy of bringing in undercover vehicles with problems other than tail pipe emission, such as missing PCV valves or the like, is a set-up used for the purpose of catching an operator in a mistake.

Respondent stated that since he was the person who missed the PCV valve and engine timing problems on the subject vehicles, it might be appropriate to revoke his advanced emission specialist license, but that his business should be able to keep its test only station license and automobile repair dealer registration, so that he can continue to conduct business and provide a livelihood for himself and his child.

Costs

20. In connection with the investigation and prosecution of this accusation, the board submitted a certification of costs showing billable professional time for bureau agents and staff in the sum of \$3,196.96. The case of *Zuckerman v. Board of Chiropractic Engineers* (200) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the respondent has been successful at the hearing in getting charges reduced or dismissed; respondent's subjective good faith belief in the merits of his position; whether the respondent has raised a colorable challenge to the proposed discipline; the financial ability to pay the cost award; and whether the scope of the investigation was appropriate to the alleged conduct of the respondent.

In this case, the only factor that might have a bearing on the award of costs is respondent's ability to pay. No evidence was offered in this regard, although the proposed discipline in this matter likely will lead to the closure of respondent's business. In any event, the amount of costs claimed is not disproportionate to the nature of the violations, or investigation needed to establish them. The costs claimed are deemed reasonable.

LEGAL CONCLUSIONS

Standards for Review

1. Business and Professions Code section 9884.7, provides in pertinent part:
 - (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
 - (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. . .
 - (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
 - (4) Any other conduct that constitutes fraud. . .
 - (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
 - (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.
 - (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.
2. Business and Professions Code section 9884.9, subdivision (a), provides that a registered automotive repair dealer must give a customer a copy of a written estimate for a specific job, and obtain authorization, duly acknowledged by the customer, of any changes or additional charges.

3. Pursuant to Health and Safety Code section 44002 provides that the bureau has the same powers and authority granted by the Automotive Repair Act to enforce the Motor Vehicle Inspection Program.

Health and Safety Code section 44072.2 further provides:

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

- (a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.
- (b) Is convicted of any crime substantially related to the qualifications, functions, or duties of the license holder in question.
- (c) Violates any of the regulations adopted by the director pursuant to this chapter.
- (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured. . .
- (g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.
- (h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

Cause for Discipline against the Auto Repair Registration

4. Cause exists for discipline against respondent's auto repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivisions (a)(1), (a)(4), and (a)(6), pertaining to the 1995 Chevrolet Impala as set forth in Findings 6 through 10.

5. Cause exists for discipline against respondent's auto repair dealer registration pursuant to Health and Safety Code section 44072.2, subdivisions (a) and (d), pertaining to the 1995 Chevrolet Impala as set forth in Findings 6 through 10.

6. Cause exists for discipline against respondent's auto repair dealer registration pursuant to Business and Professions Code section 9884.7, subdivisions (a)(1), (a)(4), and (a)(6), pertaining to the 1992 Oldsmobile Bravada pursuant to Findings 6 through 13.

7. Cause exists for discipline against respondent's auto repair dealer registration pursuant to Health and Safety Code section 44072.2, subdivisions (a) and (d), pertaining to the 1992 Oldsmobile Bravada as set forth in Findings 6 through 13.

Cause for Discipline against the Smog Test Only Station License

8. Cause exists for discipline against respondent's smog test only station license pursuant to Health and Safety Code section 44072.2, subdivision (c), with regard to both the 1995 Impala and 1992 Oldsmobile Bravada as set forth in Findings 3 through 13.

Cause for Discipline against the Advanced Emissions Specialist License

9. Cause exists for discipline against respondent's advanced emissions specialist license pursuant to Health and Safety Code section 44072.2, subdivisions (a) and (d), in that respondent did not comply with regulations pertaining to the 1995 Chevrolet Impala, by failing to determine that all emission control devices were present and functioning, failing to perform all emissions control tests and inspections, and making false and misleading entries that the car had been inspected and passed smog certification, all as set forth in Findings 6 through 10.

10. Cause exists for discipline against respondent's advanced emissions specialist license pursuant to Health and Safety Code section 44072.2, subdivision (c), with regard to the 1995 Chevrolet Impala and 1992 Oldsmobile Bravada, as well with other vehicles which formed the basis of prior discipline, all as set forth in Findings 3 through 13.

11. Cause exists for discipline against respondent's advanced emissions specialist license pursuant to Health and Safety Code section 44072.2, subdivisions (a) and (d), pertaining to the 1992 Oldsmobile Bravada as set forth in Findings 6 through 13.

Cause to Revoke Probation

12. Under the terms and conditions set forth in the order in case no. 79/08-71 (OAH no. 2008070178) respondent was ordered to comply with all statutes, regulations and rules governing automobile inspections, estimates and repairs. Further, if respondent was found to be in violation of the terms and conditions of probation, the bureau may invalidate his automotive repair registration and revoke his licenses.

Cause to vacate the previous stay of enforcement, and impose the order of revocation exists, based on the matters set forth in Findings 3, and 6 through 13, and Conclusions 4 through 12.

Factors in Mitigation or Aggravation

13. The bureau's guidelines for disciplinary penalties in Code of Regulations, title 16, section 3395.4 set forth factors in aggravation which are present here. These include

prior notices of violations; prior office conference with the bureau; prior history of formal disciplinary action; evidence that the unlawful act was part of a pattern of practice; currently on probation for improper acts; failure to successfully complete prior period of probation; and other conduct which constitutes fraud or gross negligence. Conversely, none of the bureau's stated factors in mitigation apply.

14. Respondent was well aware that his registration and licenses were ordered revoked in 2009, and stayed subject to the order of probation. The terms and conditions of that probation were provided to him and reviewed at the probation conference. Significantly, he was advised that the bureau might conduct inspections or undercover operations during the period of probation. Nonetheless, he continued to operate his business in a haphazard manner, failing to fully comply with the three-part requirements of the smog certification procedure. Respondent's dismissal of these failures as technical or procedural matters does nothing to explain, justify or mitigate his actions. All three parts of the test are required, and must be completed successfully in order to issue a valid smog certification; respondent did not comply.

16. Respondent's attempt to separate discipline against his advanced emissions specialist license from that against his registration and smog test only station license is unavailing. Respondent owns and operates the business as a sole proprietor, and is therefore responsible for its compliance with applicable statutes and regulations. Since he personally was involved in two of the incidents that led to the stayed revocation order and probation (which were substantially similar to some on which the previous order was based), and the two current violations, it is not possible to distinguish his actions as a technician from his operation of the business as a whole.

17. Given the existence of the previous discipline order, and respondent's subsequent violations, it is appropriate that respondent's probation be terminated, the stay of revocation be vacated, and that invalidation of respondent's automotive repair dealer registration and revocation of his smog check test only station and advanced emission specialist licenses be imposed.

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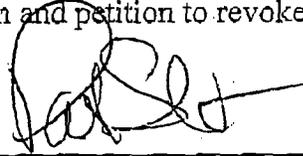
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ORDER

1. The bureau's February 3, 2009 order of probation is terminated; and the related stay of revocation is vacated. Respondent's automotive repair dealer registration is permanently invalidated, and his smog check test only station and advanced emission specialist licenses are revoked.

2. Respondent shall pay the bureau the sum of \$3,196.96 for reasonable costs of investigation and prosecution of this accusation and petition to revoke probation.

DATED: August 6, 2012



PAUL SLAVIT
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation 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**
573 Elsie Avenue
19 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.

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 licensee 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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28 ///

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.

27 ///

28 ///

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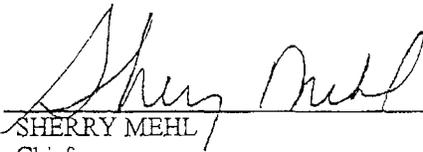
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7. Ordering William Anthony McIntosh to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

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**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



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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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:

28 ///

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-piping¹ method by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

Table One

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

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

SECOND CAUSE FOR DISCIPLINE

(Fraud)

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

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

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

///

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.

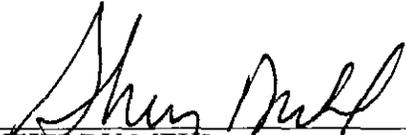
25 57. Under Health and Safety Code section 44072.8, if Advanced Emission
26 Specialist Technician License Number EA 147997, issued to William A. McIntosh, is revoked or
27 suspended, any additional license issued under this chapter in the name of said licensee may be
28 likewise revoked or suspended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



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