BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 3891

TROY A. THOMAS 1908 G Street, #1

Sacramento, CA 95814

Designated Representative License Number EXC 17778

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

By

This decision shall become effective on January 11, 2012.

It is so ORDERED December 12, 2011.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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STANLEY C. WEISSER Board President

1	Kamala D. Harris		
2	Attorney General of California		
2	JANICE K. LACHMAN Supervising Deputy Attorney General		
3	Anahita S. Crawford		
4	Deputy Attorney General State Bar No. 209545		
5	1300 I Street, Suite 125 P.O. Box 944255		
	Sacramento, CA 94244-2550		
6	Telephone: (916) 322-8311 Facsimile: (916) 327-8643		
7	Attorneys for Complainant		
8	BEFORE THE		
9	BOARD OF PHARMACY		
	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against: Case No. 3891		
12	TROY A. THOMAS OAH No. 2011060131		
13	1908 G Street, #1 Sacramento, CA 95814 Stipulated Surrender OF LICENSE AND ORDER		
14	Designated Representative License Number		
15	EXC 17778		
16	Respondent.		
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18	IT IS HEREBY STIPULATED AND AGREED by and between the parties in this		
19	proceeding that the following matters are true:		
20	PARTIES		
21	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.		
22	She brought this action solely in her official capacity and is represented in this matter by Kamala		
23	D. Harris, Attorney General of the State of California, by Anahita S. Crawford, Deputy Attorney		
. 24	General.		
25	2. Troy A. Thomas (Respondent) is represented in this proceeding by attorney Martha		
26	Russell, whose address is 1330 Enclave Parkway, Houston, TX 77077.		
27	3. On or about January 11, 2005, the Board of Pharmacy issued Designated		
28	Representative License No. EXC 17778 to Troy A. Thomas. The Designated Representative		
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Stipulated Surrender of License (Case No. 3891)

License was in full force and effect at all times relevant to the charges brought in Accusation No. 3891, and will expire on January 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3891 was filed before the Board of Pharmacy (Board), Department of
 5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
 6 statutorily required documents were properly served on Respondent on April 28, 2011.
 7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
 8 No. 3891 is attached as Exhibit A and incorporated by reference.

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ADVISEMENT AND WAIVERS

Respondent has carefully read, fully discussed with counsel, and understands the
 charges and allegations in Accusation No. 3891. Respondent also has carefully read, fully
 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
 Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a
hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
his own expense; the right to confront and cross-examine the witnesses against him; the right to
present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
the attendance of witnesses and the production of documents; the right to reconsideration and
court review of an adverse decision; and all other rights accorded by the California
Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
every right set forth above.

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8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3891, agrees that cause exists for discipline and hereby surrenders his Designated Representative License No. EXC 17778 for the Board's formal acceptance.

CULPABILITY

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Designated Representative License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
15 License and Order, including facsimile signatures thereto, shall have the same force and effect as
16 the originals.

17 12. This Stipulated Surrender of License and Order is intended by the parties to be an
18 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
19 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
20 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
21 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
22 executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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<u>ORDER</u>

IT IS HEREBY ORDERED that Designated Representative License No. EXC 17778,
issued to Respondent Troy A. Thomas, is surrendered and accepted by the Board of Pharmacy.
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14. Respondent surrenders designated representative license number EXC 17778 as of the effective date of this decision. Respondent shall relinquish his or her designated representative license to the board within ten (10) days of the effective date of this decision.

15. The surrender of respondent's license and the acceptance of the surrendered license by
the board shall constitute the imposition of discipline against respondent. This decision
constitutes a record of discipline and shall become a part of respondent's license history with the
board.

8 16. Respondent understands and agrees that if he or she ever files an application for
9 licensure or a petition for reinstatement in the State of California, the board shall treat it as a new
10 application for licensure.

17. Respondent may not apply for any license, permit or registration from the board for 11 three (3) years from the effective date of this decision. Respondent stipulates that should he or 12 she apply for any license from the board on or after the effective date of this decision, all 13 allegations set forth in the accusation shall be deemed to be true, correct and admitted by 14 respondent when the board determines whether to grant or deny the application. Respondent shall 15 16 satisfy all requirements applicable to that license as of the date the application is submitted to the board prior to issuance of a new license. Respondent is required to report this surrender as 17 disciplinary action. 18

18. Respondent stipulates that should he or she apply for any license from the board on or
after the effective date of this decision, investigation and prosecution costs in the amount of
\$2,294.50 shall be paid to the board prior to issuance of the new license.

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1	ACCEPTANCE
2	I have carefully read the above Stipulated Surrender of License and Order and have fully
3	discussed it with my attorney, Martha Russell. I understand the stipulation and the effect it will
4	have on my Designated Representative License. I enter into this Stipulated Surrender of License
5	and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
6	Order of the Board of Pharmacy.
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8	DATED: 7.29.2011
9	TROY & THOMAS Respondent
10	I have read and fully discussed with Respondent Troy A. Thomas the terms and conditions
-11	and other matters contained in this Stipulated Surrender of License and Order. I approve its form
12	and content.
13	DATED: 1/29/11 Martha Kukell
14	MARTHA RUSSELL Attorney for Respondent
15	
16	ENDORSEMENT
17	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
18	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.
. 19	Dated: 9.13.2011 Respectfully submitted,
20	KAMALA D. HARRIS Attorney General of California
21	JANICE K. LACHMAN Supervising Deputy Attorney General
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23	ANAHITA S. CRAWFORD
24	Deputy Attorney General
25	Attorneys for Complainant
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	Stipulated Surrender of License (Case No. 3891)

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Exhibit A

Accusation No. 3891

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1 2 3 4 5 6 7 8 9	KAMALA D. HARRIS Attorney General of California JANICE K. LACHMAN Supervising Deputy Attorney General ANAHITA S. CRAWFORD Deputy Attorney General State Bar No. 209545 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 322-8311 Facsimile: (916) 327-8643 Attorneys for Complainant BEFORI BOARD OF P. DEPARTMENT OF CO STATE OF CA	HARMACY DNSUMER AFFAIRS
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12	In the Matter of the Accusation Against:	Case No. 3891
12	TROY A. THOMAS	
13	1908 G Street, #1 Sacramento, CA 95814	ACCUSATION
15	Designated Representative License Number	
	EXC 17778	
16 17	Respondent.	
18	Complainant alleges:	
10	PART	IES
20		this Accusation solely in her official capacity
21	as the Executive Officer of the Board of Pharmacy	
22	2. On or about January 11, 2005, the Boa	
23	Representative License Number EXC 17778 to Tr	
24	Representative License was in full force and effect	
25	herein and will expire on January 1, 2012, unless r	
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	1	Accusation

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1	JURISDICTION
2	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
- 3	Consumer Affairs, under the authority of the following laws. All section references are to the
4	Business and Professions Code unless otherwise indicated.
5	4. Section 118, subdivision (b), of the Code provides that the expiration of a license
6	shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
7	within which the license may be renewed, restored, reissued or reinstated.
8	5. Section 4300 of the Code states permits the board to suspend or revoke every license
9	that it issues, or to take any other appropriate disciplinary action as the board may deem proper in
10	its discretion.
. 11	6. Section 4053 of the Code states:
12	(a) Notwithstanding Section 4051, the board may issue a license as a designated
13	representative to provide sufficient and qualified supervision in a wholesaler or veterinary food-animal drug retailer. The designated representative shall protect the
14	public health and safety in the handling, storage, and shipment of dangerous drugs and dangerous devices in the wholesaler or veterinary food-animal drug retailer.
15	STATUTORY PROVISIONS
	7. Section 4301 of the Code states:
. 17	The board shall take action against any holder of a license who is guilty of
. 18	unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:
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20	(h) The administering to oneself, of any controlled substance, or the use of any
21	dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or
· 22	to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
23	••••
24 25	(k) The conviction of more than one misdemeanor or any felony involving the
25	or any combination of those substances.
20	(1) The conviction of a crime substantially related to the qualifications,
28	functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this
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	Accusation

state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense. substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

COST RECOVERY

8. Section 125.3 of the Code states, in pertinent part, that the 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.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

9. Respondent is subject to disciplinary action under section 4301, subdivision (1) in that 20 on or about July 21, 2010, in the criminal proceeding entitled *People v. Thomas, Troy A.*, in 21 Sacramento County Superior Court, Case Number 10T02693, Respondent was convicted on his 22 23 plea of no contest to violating Vehicle Code section 23152 (b) (driving with a blood alcohol level above .08), a misdemeanor. Respondent's blood alcohol level was .32/.31. Respondent admitted 24 25 to a prior conviction of Vehicle Code violation 23152(b) (driving under the influence, 26 misdemeanor) on March 28, 2005, and to having a blood alcohol level in excess of .15, in 27 violation of Vehicle Code section 23578. The circumstances are that: on or about Friday 28 April 23, 2010, at 9:30 p.m., officers responded to a vehicle collision in Sacramento where one

driver was reportedly exhibiting several signs of intoxication. Upon arrival, Respondent was asked to perform field sobriety tests, which he performed poorly. Respondent was arrested for being under the influence of alcohol and operating a motor vehicle.

10. Respondent is subject to disciplinary action under section 4301, subdivision (1) in that
on or about March 28, 2005, in the criminal proceeding entitled *People v. Thomas, Troy A.*, in
Sacramento County Superior Court, Case Number 05T01364, Respondent was convicted on his
plea of guilty to violating Vehicle Code section 23152 (b) (driving with a blood alcohol level
above .08), a misdemeanor. Respondent also admitted to having a blood alcohol level in excess
of .20%, in violation of Vehicle Code section 23578. Respondent's blood alcohol level was .28.

SECOND CAUSE FOR DISCIPLINE

(Conviction of More Than One Alcohol-Related Misdemeanor) 11. Respondent is subject to disciplinary action under section 4301 (k) in that Respondent

has been convicted of more than one misdemeanor involving an alcohol related offense, as more
fully set forth in paragraphs 9 and 10, above.

THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol in Dangerous Manner)

17 12. Respondent is subject to disciplinary action under section 4301 (h) in that on
18 April 23, 2010, Respondent used alcohol in a dangerous manner when he had a blood alcohol
19 level of .32/.31 and chose to drive a vehicle, as more fully set forth in paragraph 9, above.
20 Additionally, on March 6, 2005, Respondent used alcohol in a dangerous manner when he had a
21 blood alcohol level of .28 and chose to drive a vehicle, as more fully set forth in paragraph 10,
22 above.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Law)

Respondent is subject to disciplinary action under section 4301 (o) for violation of
pharmacy law as more fully set forth in paragraphs 9 to 12, above.

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1	PRAYER	
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
3	and that following the hearing, the Board of Pharmacy issue a decision:	
4	1. Revoking or suspending Designated Representative License Number EXC 17778,	
5	issued to Troy A. Thomas;	
[.] 6	2. Ordering to Troy A. Thomas to pay the Board of Pharmacy the reasonable costs of	
7	the investigation and enforcement of this case, pursuant to Business and Professions Code section	
8	125.3; and,	
- 9	3. Taking such other and further action as deemed necessary and proper.	
10		
11	DATED: 4/18/11 / reine And	
12	VIRGINIA MEROLD Executive Officer	
13	Board of Pharmacy Department of Consumer Affairs	
14	State of California Complainant	
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