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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 7178

13 **MELISSA CALDERON**
14 **514 Ascella Drive**
15 **Diamond Springs, CA 95619**

DEFAULT DECISION AND ORDER

16 **Pharmacy Technician License No. TCH**
17 **119531**

[Gov. Code, §11520]

18 Respondent.

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21 **FINDINGS OF FACT**

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23 1. On or about September 15, 2021, Complainant Anne Sodergren, in her official
24 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
25 filed Accusation No. 7178 against Melissa Calderon (Respondent) before the Board of Pharmacy.
26 (Accusation attached as Exhibit A.)

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1 2. On or about January 31, 2012, the Board of Pharmacy (Board) issued Pharmacy
2 Technician License No. TCH 119531 to Respondent. The Pharmacy Technician License was in
3 full force and effect at all times relevant to the charges brought in Accusation No. 7178 and will
4 expire on December 31, 2021, unless renewed.

5 3. On or about September 20, 2021, Respondent was served by Certified and First Class
6 Mail copies of the Accusation No. 7178, Statement to Respondent, Notice of Defense, Request
7 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
8 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
9 section 4100, is required to be reported and maintained with the Board. Respondent's address of
10 record was and is: 514 Ascella Drive, Diamond Springs, CA 95619.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505(c) and/or Business and Professions Code section 124.

13 5. Government Code section 11506(c) states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense . . . and the notice shall be deemed a specific denial of all
16 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
17 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
18 discretion may nevertheless grant a hearing.

19 6. The Board takes official notice of its records and the fact that Respondent failed to
20 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
21 waived her right to a hearing on the merits of Accusation No. 7178.

22 7. California Government Code section 11520(a) states, in pertinent part:

23 (a) If the respondent either fails to file a notice of defense . . . or to appear at
24 the hearing, the agency may take action based upon the respondent's express
25 admissions or upon other evidence and affidavits may be used as evidence without
26 any notice to respondent

27 8. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
as well as taking official notice of all the investigatory reports, exhibits and statements contained
therein on file at the Board's offices regarding the allegations contained in Accusation No. 7178,

1 finds that the charges and allegations in Accusation No. 7178, are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 9. The Board finds that the actual costs for Investigation and Enforcement are \$2,441.00
4 as of October 22, 2021.

5 **DETERMINATION OF ISSUES**

6 1. Based on the foregoing findings of fact, Respondent Melissa Calderon has subjected
7 her Pharmacy Technician License No. TCH 119531 to discipline.

8 2. The agency has jurisdiction to adjudicate this case by default.

9 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
10 License based upon the following violations alleged in the Accusation which are supported by the
11 evidence contained in the Default Decision Investigatory Evidence Packet in this case:

- 12 a. Respondent is subject to disciplinary action under Code section 4301, subdivision (l);
13 b. Respondent is subject to disciplinary action under Code section 4301, subdivision (h);
14 c. Respondent is subject to disciplinary action under Code section 4301, subdivision (k);
15 d. Respondent is subject to disciplinary action under Code section 4301, subdivision (o).

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 119531, issued to Respondent Melissa Calderon, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on January 5, 2022.

It is so ORDERED on December 6, 2021.



Seung Oh
Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

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DOJ Matter ID:SA2021303728

Attachment: Exhibit A: Accusation

Exhibit A

Accusation

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Attorney General of California
2 KAREN R. DENVIR
Supervising Deputy Attorney General
3 KATELYN E. DOCHERTY
Deputy Attorney General
4 State Bar No. 322028
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7 *Attorneys for Complainant*

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 7178

13 **MELISSA CALDERON**
14 **514 Ascella Drive**
Diamond Springs, CA 95619

ACCUSATION

15 **Pharmacy Technician License No. TCH**
16 **119531**

17 Respondent.

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21 **PARTIES**

22 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

24 2. On or about January 31, 2012, the Board of Pharmacy issued Pharmacy Technician
25 License Number TCH 119531 to Melissa Calderon (Respondent). The Pharmacy Technician
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on December 31, 2021, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Code section 4011 provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code §§ 4000, *et seq.*] and the Uniform Controlled Substances Act [Health & Safety Code §§ 11000, *et seq.*].

5. Code section 4300 states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper. . . .

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

6. Code section 4300.1, states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

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STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(h) The administering to oneself, of any controlled substance, or the use of any 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 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.

...

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, 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 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...

...

(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.

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1 8. California Code of Regulations (“Regulation”), title 16, section 1775.1(d) states, in
2 pertinent part:

3 Failure of a person cited to pay a fine within 30 days of the date of assessment,
4 unless the citation is being appealed, may result in disciplinary action by the board.

5 **COST RECOVERY**

6 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
10 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
11 included in a stipulated settlement.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Conviction of Substantially Related Crime)**

14 10. Respondent is subject to disciplinary action under Code section 4301, subdivision (I),
15 in that she was convicted of a crime that is substantially related to the functions, qualifications
16 and duties of a pharmacy technician. The circumstances are as follows.

17 11. On or about August 5, 2020, in the criminal matter titled *People v. Melissa Calderon*
18 (Sacramento County Superior Court Case Number 20MI005477), Respondent was convicted on
19 her pleas of nolo contendere to a misdemeanor violation of Vehicle Code section 23152,
20 subdivision (b) (driving while having a blood alcohol content of 0.08% or higher), , and admitted
21 to having two prior DUI convictions (Vehicle Code section 23546) and having had a blood
22 alcohol content of 0.15% or higher (Vehicle Code section 23578). The court sentenced
23 Respondent to serve 5 days in county jail, with credit for one day served, and placed Respondent
24 on probation for a period of five years. Further, the court ordered Respondent to complete an
25 SB38 program, to not drive without an ignition interlock device, and to pay various fines and
26 fees. The underlying circumstances were as follows.

27 12. On or about February 22, 2020, officers with the California Highway Patrol observed
28 a grey Honda Civic traveling at a speed around 90 mph and weaving onto the right shoulder on
US-50 eastbound west of Hazel Ave in Sacramento, California. The officers made a traffic stop

1 and made contact with the driver, Respondent. Upon making contact with Respondent, the
2 officer noted that Respondent's California Driver License was suspended as of November 29,
3 2019 per Vehicle Code section 13353.2 and that Respondent was on an active DUI probation. The
4 officer also noticed Respondent had watery eyes, slurred speech, and was emitting a strong odor
5 of alcoholic beverage. Respondent was unable to successfully complete subsequent field sobriety
6 testing and was arrested for driving under the influence. Respondent's blood alcohol content was
7 determined to be 0.158%.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcohol)**

10 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
11 in that she administered to herself or otherwise used alcohol to an extent or in a manner as to be
12 dangerous or injurious to herself and others, as alleged in greater detail above in paragraphs 10-
13 12.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Conviction of Multiple Misdemeanors Involving Use, Consumption or Self-Administration**
16 **of Alcohol)**

17 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),
18 in that she was convicted of more than one misdemeanor involving the use, consumption or self-
19 administration of alcohol. In addition to the one misdemeanor conviction alleged above in
20 paragraph 10, which is incorporated herein by reference, Respondent experienced prior
21 misdemeanor convictions for driving under the influence as follows:

22 15. On or about November 7, 2012, in the criminal matter titled *People v. Melissa*
23 *Calderon* (Sacramento County Superior Court Case Number 12T05412), Respondent was
24 convicted on her plea of nolo contendere for reckless driving with alcohol involved, in violation
25 of Vehicle Code section 23103.5. The court sentenced Respondent to informal probation for
26 three years, and ordered her to pay various fines and fees.

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16. On or about November 26, 2019, in the criminal matter titled *People v. Melissa Calderon* (Sacramento County Superior Court Case Number 19MI015956), Respondent was convicted on her plea of no contest for driving while having a blood alcohol content of 0.08% or higher, in violation of Vehicle Code section 23152, subdivision (b). The court sentenced Respondent to fifteen (15) days in county jail, four years of informal probation, and ordered her to pay various fines and fees.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Citation)

17. Respondent is subject to disciplinary action under Code section 4301(o), for unprofessional conduct, in that Respondent violated Regulation section 1775.1(d) in that she failed to comply with Citation Number CI-2018-84580 as follows: On or about December 11, 2019, Citation Number CI 2015 68926 was issued to Respondent. The citation ordered Respondent to pay \$800 in fines by January 10, 2020. Respondent failed to pay the fines. The citation was based on the following violations: (i) conviction of more than one felony or misdemeanor involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, pursuant to Code section 4301, subdivision (k); (ii) the administering to oneself of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, pursuant to Code section 4301, subdivision (h); and (iii) conviction of a substantially related crime, pursuant to Code section 4301, subdivision (l). The circumstances providing the basis for this citation are the same as those described in paragraphs 15-16 above, each of which are incorporated herein by reference.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 119531, issued to Melissa Calderon;

2. Ordering Melissa Calderon to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 9/15/2021

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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