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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:

13 **GABRIEL ELIAS CALVILLO**

14 145 Beverly Drive
Clovis, CA 93612

15 **Pharmacy Technician Registration**
16 **No. 128165**

17 Respondent.

Case No. 7670

OAH No. 2024040820

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about December 12, 2023, Complainant Anne Sodergren, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Accusation No. 7670 against Gabriel Elias Calvillo (Respondent) before the Board of
22 Pharmacy (Board). (Accusation attached as Exhibit A.)

23 2. On or about December 10, 2012, the Board issued Pharmacy Technician Registration
24 No. 128165 to Respondent. The Pharmacy Technician Registration was in full force and effect at
25 all times relevant to the charges brought in Accusation No. 7670, but expired on February 29,
26 2024, and was cancelled on June 2, 2024, pursuant to Business and Professions Code section
27 4402(e). However, pursuant to Business and Professions Code sections 118(b) and/or 4300.1,

28 ///

1 this lapse in licensure does not deprive the Board of its authority to institute or continue this
2 disciplinary proceeding.

3 3. On or about December 27, 2023, Respondent was served with Accusation No. 7670.

4 4. On or about January 9, 2024, Respondent signed and returned a Notice of Defense,
5 requesting a hearing in this matter.

6 5. On April 24, 2024, a Notice of Hearing was served by Certified and First-Class Mail
7 at Respondent's address of record which was and is: 145 Beverly Drive, Clovis, CA 93612.
8 The Notice of Hearing informed Respondent that an administrative hearing in this matter was
9 scheduled for August 12, 2024.

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

12 7. The matter was called for hearing at the date, time and location set forth in the Notice
13 of Hearing. The assigned Administrative Law Judge found that the service of the Notice of
14 Hearing on Respondent was proper. There was no appearance by or on behalf of Respondent. A
15 default was declared and on motion of counsel for Complainant, the matter was remanded to the
16 Board under Government Code section 11520.

17 8. Government Code section 11506(c) states, in pertinent part:

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

23 9. California Government Code section 11520(a) states, in pertinent part:

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

28 10. Pursuant to its authority under Government Code section 11520, the Board finds
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,
finds that the charges and allegations in Accusation No. 7670 are, separately and severally, true

1 and correct by a preponderance of the evidence.

2 11. The Board finds that the actual costs for Investigation and Enforcement are \$8,589.25
3 as of August 7, 2024.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Gabriel Elias Calvillo has
6 subjected his Pharmacy Technician Registration No. 128165 to discipline.

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

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

11 a. Criminal Convictions, pursuant to Business and Professions Code sections 490
12 and 4301, subdivision (I), in that Respondent was convicted of two crimes that are substantially
13 related to the qualifications, functions, or duties of a pharmacy technician as follows:

14 (i) On or about February 19, 2021, in the criminal proceeding titled *People*
15 *of the State of California v. Gabriel Elias Calvillo*, Fresno County Superior Court Case No.
16 M19924482, Respondent was convicted by the court on his plea of nolo contendere to violating
17 Penal Code section 23152, subdivision (b) (driving while having a blood alcohol concentration
18 ["BAC"] of .08% or more), a misdemeanor. Respondent further admitted to special allegations
19 under Vehicle Code section 23578 for having a BAC over .15%. The underlying circumstances
20 were that Respondent was arrested for driving under the influence of alcohol on or about June 26,
21 2019, after crashing his vehicle. Respondent's BAC at the time of his arrest was .21%/.20%.

22 (ii) On or about August 1, 2022, in the criminal proceeding titled *People of*
23 *the State of California v. Gabriel Elias Calvillo*, Fresno County Superior Court Case No.
24 F22900691, Respondent was convicted by the court on his plea of nolo contendere to violating
25 Penal Code section 245, subdivision (a)(4) (assault by means likely to produce great bodily
26 injury), a misdemeanor. The underlying circumstances were that Respondent was arrested on or
27 about November 28, 2021, following a report and investigation concerning a domestic violence
28 incident that occurred on or about November 27, 2021, involving Respondent's girlfriend.

b. Moral Turpitude, pursuant to Code section 4301, subdivision (f), in that Respondent committed acts involving moral turpitude and/or dishonesty by inflicting corporal injury on a spouse/cohabitant, as set forth in paragraph 3(a)(ii) above.

c. Dangerous Use of Alcohol, pursuant to Business and Professions Code section 4301, subdivision (h), in that Respondent used alcoholic beverages to an extent or in a manner as to be dangerous or injurious to himself or to any other person or the public, as set forth in paragraph 3(a)(i) above.

d. False Statement/Misrepresentation, pursuant to 4301, subdivision (g), in that Respondent, when applying to the Board for the renewal of his registration on or about December 26, 2021, falsely stated, under penalty of perjury, that he had not been convicted of any crimes since the time of his last renewal application, when he was convicted for driving under the influence of alcohol on or about February 19, 2021, as set forth in paragraph 3(a)(i) above.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. 128165, issued to Respondent Gabriel Elias Calvillo, is revoked. Pursuant to Business and Professions Code section 4307, Gabriel Elias Calvillo is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of any pharmacy licensee.

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 November 6, 2024.

It is so ORDERED on October 7, 2024.

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

By

Seung W. Oh

4 Seung W. Oh, Pharm.D., Board President

Exhibit A

Accusation

1 ROB BONTA
Attorney General of California
2 KAREN R. DENVIR
Supervising Deputy Attorney General
3 DANIEL D. MCGEE
Deputy Attorney General
4 State Bar No. 218947
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7895
Facsimile: (916) 324-5567
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. 7670

13 **GABRIEL ELIAS CALVILLO**

ACCUSATION

14 145 Beverly Drive
Clovis, CA 93612

15 **Pharmacy Technician License No. 128165**

16 Respondent.

17
18 **PARTIES**

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

21 2. On or about December 10, 2012, the Board issued Pharmacy Technician License
22 Number 128165 to Gabriel Elias Calvillo (Respondent). The Pharmacy Technician License was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 February 29, 2024, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Code section 4300, subdivision (a), states, "Every license issued may be suspended or
2 revoked."

3 5. Code section 4300.1 states:

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

10 6. Code section 4307 states in pertinent part:

11 (a) Any person who has been denied a license or whose license has been revoked or is
12 under suspension, or who has failed to renew his or her license while it was under
13 suspension ... shall be prohibited from serving as a manager, administrator, owner,
14 member, officer, director, associate, partner, or in any other position with management or
15 control of a licensee as follows:

16 (1) Where a probationary license is issued or where an existing license is placed on
17 probation, this prohibition shall remain in effect for a period not to exceed five years.

18 (2) Where the license is denied or revoked, the prohibition shall continue until the
19 license is issued or reinstated.

20 ...

21 **STATUTORY PROVISIONS**

22 7. Code section 4301 states, in pertinent part:

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

26 ...

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
28 deceit, or corruption, whether the act is committed in the course of relations as a
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely
represents the existence or nonexistence of a state of facts.

(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.

1 ...

2 (I) The conviction of a crime substantially related to the qualifications,
3 functions, and duties of a licensee under this chapter. The record of conviction of a
4 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
5 States Code regulating controlled substances or of a violation of the statutes of this
6 state regulating controlled substances or dangerous drugs shall be conclusive
7 evidence of unprofessional conduct. In all other cases, the record of conviction shall
8 be conclusive evidence only of the fact that the conviction occurred. The board may
9 inquire into the circumstances surrounding the commission of the crime, in order to
10 fix the degree of discipline or, in the case of a conviction not involving controlled
11 substances or dangerous drugs, to determine if the conviction is of an offense
12 substantially related to the qualifications, functions, and duties of a licensee under this
13 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
14 contendere is deemed to be a conviction within the meaning of this provision. The
15 board may take action when the time for appeal has elapsed, or the judgment of
16 conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under
18 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
19 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
20 dismissing the accusation, information, or indictment.

21

22 8. Code section 490 states, in pertinent part:

23 (a) In addition to any other action that a board is permitted to take against a
24 licensee, a board may suspend or revoke a license on the ground that the licensee has
25 been convicted of a crime, if the crime is substantially related to the qualifications,
26 functions, or duties of the business or profession for which the license was issued.

27 (b) Notwithstanding any other provision of law, a board may exercise any
28 authority to discipline a licensee for conviction of a crime that is independent of the
authority granted under subdivision (a) only if the crime is substantially related to the
qualifications, functions, or duties of the business or profession for which the
licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of
guilty or a conviction following a plea of nolo contendere. An action that a board is
permitted to take following the establishment of a conviction may be taken 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.

...
23

24 **COST RECOVERY**

25 9. Code section 125.3 provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licensee found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case, with failure of the licensee to comply subjecting the license to not being

renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

10. Respondent is subject to disciplinary action pursuant to Code sections 490 and 4301, subdivision (I), in that Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician as follows:

11. On or about February 19, 2021, in the criminal proceeding titled *The People of the State of California v. Gabriel Elias Calvillo* (Fresno County Super. Ct. Case Number M19924482), Respondent was convicted by the court on his plea of nolo contendere to violating Penal Code section 23152, subdivision (b) (driving while having a blood alcohol concentration of .08% or more), a misdemeanor. Respondent further admitted to special allegations under Vehicle Code section 23578 for having a blood alcohol content over .15%. Respondent was sentenced to serve 180 days in jail, placed on three years of probation, and ordered to pay fines and fees. Respondent was further ordered to attend a 3-month Level 1 Alcohol Program. The circumstances of the crime were that on or about June 26, 2019, at approximately 1:00 a.m., an officer with the California Highway Patrol was dispatched to the area of westbound State Road 168 east of Ashlan Avenue in Fresno, California, based on a report of a single-vehicle collision. Upon arrival, the officer contacted the driver, identified as Respondent, who was sitting on a gurney in the rear of an ambulance. At that time, the officer immediately noticed the odor of alcohol emitting from Respondent's person, and that Respondent had bloodshot and watery eyes, and unrecognizable speech. Respondent admitted to the officer that he had consumed one or two alcoholic beverages that evening. Two breath samples beginning at 1:35 a.m., indicated that Respondent's blood alcohol level was .21% and .20%.

12. On or about August 1, 2022, in the criminal proceeding titled *The People of the State of California v. Gabriel Elias Calvillo* (Fresno County Super. Ct. Case Number F22900691), Respondent was convicted by the court on his plea of nolo contendere to violating Penal Code section 245, subdivision (a)(4) (assault by means likely to produce great bodily injury), a

1 misdemeanor. The court granted Respondent a conditional settlement for a period of 18 months
2 under the condition that Respondent would have no new arrests. Respondent was ordered to
3 complete a 52-week batterer's treatment program. The circumstances of the crime were that on or
4 about November 27, 2021, an officer with the Clovis Police Department was dispatched to a
5 confidential address in Clovis, California, based on a report of domestic violence. The officer
6 contacted the victim who stated that her boyfriend, identified as Respondent, had been drinking
7 alcohol and gotten upset with her over family issues, when he grabbed her by the neck, and forced
8 her against a wall for approximately five to ten seconds. The following day, Respondent was
9 contacted by an officer, at which time Respondent admitted to having pushed the victim.
10 Respondent was arrested for violating Penal Code section 273.5, subdivision (a) (inflicting
11 corporal injury on a spouse/cohabitant).

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Moral Turpitude)**

14 13. Respondent is subject to disciplinary action pursuant to Code section 4301,
15 subdivision (f), in that Respondent committed acts involving moral turpitude and/or dishonesty
16 by inflicting corporal injury on a spouse/cohabitant, as set forth in paragraph 12, above.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of Alcohol)**

19 14. Respondent is subject to disciplinary action pursuant to Code section 4301,
20 subdivision (h), in that Respondent used alcoholic beverages to an extent or in a manner as to be
21 dangerous or injurious to himself or to any other person or the public, as more particularly set
22 forth in paragraphs 11 and 12, above.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(False Statement/Misrepresentation)**

25 15. Respondent is subject to disciplinary action pursuant to Code section 4301,
26 subdivision (g), in that Respondent knowingly made a false statement of material fact on a
27 document that Respondent submitted to the Board. Specifically, on or about December 26, 2021,
28 Respondent submitted an application for license renewal to the Board. In that renewal

1 application, Respondent falsely stated, under penalty of perjury, that he had not been convicted of
2 any crimes since the time of his last renewal application. The true facts were that Respondent, on
3 or about February 19, 2021, sustained a conviction for driving under alcohol, as set forth in
4 paragraph 11, above.

5 **OTHER MATTERS**

6 16. Pursuant to Code section 4307, if discipline is imposed on Gabriel Elias Calvillo, then
7 Gabriel Elias Calvillo shall be prohibited from serving as a manager, administrator, owner,
8 member, officer, director, associate, or partner of a licensee for 1) a period not to exceed five
9 years if Pharmacy Technician License Number 128165 is placed on probation; or, 2) if Pharmacy
10 Technician License Number 128165 is revoked, the prohibition shall continue until Pharmacy
11 Technician License Number 128165 is reinstated.

12 **PRAYER**

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

15 1. Revoking or suspending Pharmacy Technician License Number 128165, issued to
16 Gabriel Elias Calvillo;

17 2. Prohibiting Gabriel Elias Calvillo from serving as a manager, administrator, owner,
18 member, officer, director, associate, partner, or in any other position with management or control
19 of any pharmacy licensee;

20 3. Ordering Gabriel Elias Calvillo to pay the Board of Pharmacy the reasonable costs of
21 the investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3; and,

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

24
25 DATED: 12/12/2023

Sodergren,
Anne@DCA

Digitally signed by Sodergren,
Anne@DCA
Date: 2023.12.12 15:12:18
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ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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