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

11 In the Matter of the Statement of Issues Against:

Case No. 4291

12  
13 **LYUBA OLEKSANDROVNA KOLOMIYETS**  
**A.K.A. LYUBOV KOLOMIYETS**  
14 **535 Arlingdale Circle**  
**Rio Linda, California 95673**

**STATEMENT OF ISSUES**

15 Respondent.  
16

17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about May 13, 2011, the Board of Pharmacy, Department of Consumer Affairs  
22 received an Application for Registration as a Pharmacy Technician (Application) from Lyuba  
23 Oleksandrovna Kolomiyets a.k.a. Lyubov Kolomiyets (Respondent). On or about March 9, 2011,  
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
25 representations in the application. The Board denied the Application on February 14, 2012.

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JURISDICTION

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

5 4. Code section 4300, in pertinent part, states:

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

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

- 10 (1) Suspending judgment.  
11 (2) Placing him or her upon probation.  
12 (3) Suspending his or her right to practice for a period not exceeding one year.  
13 (4) Revoking his or her license.  
14 (5) Taking any other action in relation to disciplining him or her as the board in  
15 its discretion may deem proper.

16 (c) The board may refuse a license to any applicant guilty of unprofessional  
17 conduct. The board may, in its sole discretion, issue a probationary license to any  
18 applicant for a license who is guilty of unprofessional conduct and who has met all  
19 other requirements for licensure. The board may issue the license subject to any  
20 terms or conditions not contrary to public policy, including, but not limited to, the  
21 following:

- 22 (1) Medical or psychiatric evaluation.  
23 (2) Continuing medical or psychiatric treatment.  
24 (3) Restriction of type or circumstances of practice.  
25 (4) Continuing participation in a board-approved rehabilitation program.  
26 (5) Abstention from the use of alcohol or drugs.  
27 (6) Random fluid testing for alcohol or drugs.  
28 (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any  
probationary certificate of licensure for any violation of the terms and conditions of  
probation. Upon satisfactory completion of probation, the board shall convert the  
probationary certificate to a regular certificate, free of conditions.

(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.

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5. Code section 4301, in pertinent part, states:

The board shall take action against any holder of a license who is guilty of 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:

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.

....

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

....

(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.

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1           6.    Code section 480, in pertinent part, states:

2           (a) A board may deny a license regulated by this code on the grounds that the  
3 applicant has one of the following:

4           (1) Been convicted of a crime. A conviction within the meaning of this section  
5 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.  
6 Any action which a board is permitted to take following the establishment of a  
7 conviction may be taken when the time for appeal has elapsed, or the judgment of  
8 conviction has been affirmed on appeal, or when an order granting probation is made  
9 suspending the imposition of sentence, irrespective of a subsequent order under the  
10 provisions of Section 1203.4 of the Penal Code.

11           (2) Done any act involving dishonesty, fraud or deceit with the intent to  
12 substantially benefit himself or another, or substantially injure another; or

13           (3)(A) Done any act which if done by a licentiate of the business or profession  
14 in question, would be grounds for suspension or revocation of license.

15           (B) The board may deny a license pursuant to this subdivision only if the crime  
16 or act is substantially related to the qualifications, functions or duties of the business  
17 or profession for which application is made.

18           .....

19           (c) A board may deny a license regulated by this code on the ground that the  
20 applicant knowingly made a false statement of fact required to be revealed in the  
21 application for such license.

22           7.    California Code of Regulations, title 16, section 1770, states:

23           For the purpose of denial, suspension, or revocation of a personal or facility  
24 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
25 Professions Code, a crime or act shall be considered substantially related to the  
26 qualifications, functions or duties of a licensee or registrant if to a substantial degree  
27 it evidences present or potential unfitness of a licensee or registrant to perform the  
28 functions authorized by his license or registration in a manner consistent with the  
public health, safety, or welfare.

          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.

CONTROLLED SUBSTANCES AT ISSUE

          9.    Oxycodone is a Schedule II controlled substance as designated by Health and Safety  
Code section 11055(b)(1)(M), and a dangerous drug within the meaning of Code section 4022, in  
that under federal law it requires a prescription.

1        10. Hydrocodone, also known as dihydrocodeinone, is a Schedule III narcotic controlled  
2 substance as designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug  
3 within the meaning of Code section 4022, in that under federal law it requires a prescription.

4        11. Amphetamine is a Schedule II controlled substance as designated by Health and  
5 Safety Code section 11055(d)(1), and a dangerous drug within the meaning of Code section 4022,  
6 in that under federal law it requires a prescription.

7                                    FIRST CAUSE FOR DENIAL OF APPLICATION

8    (Criminal Conviction)

9        12. Respondent's application is subject to denial under Code sections 480, subds. (a)(1)  
10 and (a)(3); 4300, subd. (c); and 4301, subd. (l) in that Respondent has been convicted of the  
11 following crime that are substantially related to the qualifications, functions, and duties of a  
12 licensed pharmacy technician:

13        a. On or about January 11, 2011, in a criminal proceeding entitled *People v. Lyubov*  
14 *Kolomiyets* in Placer County Superior Court, Case Number 62-102261, Respondent was  
15 convicted by plea of nolo contendere of violating Vehicle Code section 12500(A) (driving a  
16 motor vehicle without a valid driver's license), a misdemeanor. The circumstances are that on or  
17 about September 30, 2010, Respondent drove a motor vehicle without a valid driver's license.

18                                    SECOND CAUSE FOR DENIAL OF APPLICATION

19    (Act involving Moral Turpitude, Dishonesty, Fraud or Deceit)

20        13. Respondent's application is subject to denial under Code sections 480, subd. (a)(2);  
21 4300, subd. (c); and 4301, subd. (f) in that Respondent engaged in acts involving moral turpitude,  
22 dishonesty, fraud or deceit. The circumstances are that when Respondent signed her Application,  
23 she certified under penalty of perjury on page 3, item 6, that she had not been convicted of a  
24 crime. In fact, Respondent had been convicted of a crime as indicated above in paragraph 12.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(False Representation)

14. Respondent's application is subject to denial under Code sections 480, subd. (c); 4300, subd. (c); and 4301, subd. (g) in that Respondent made a false representation on her Application. The circumstances are detailed above in paragraph 13.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Unlawful Possession of Controlled Substances)

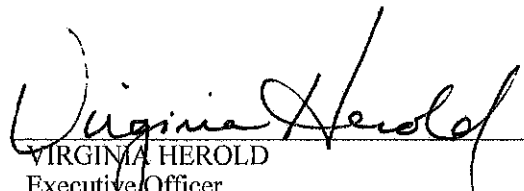
15. Respondent's application is subject to denial under Code sections 480, subd. (a)(3); 4300, subd. (c); and 4301, subd. (j) in that Respondent possessed controlled substances unlawfully. The circumstances are that when Respondent was arrested for the crime detailed above in paragraph 12, Respondent was unlawfully in possession of controlled substances: oxycodone, hydrocodone, and amphetamine.

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. Denying the Application of Lyuba Oleksandrovna Kolomiyets a.k.a. Lyubov Kolomiyets for Registration as a Pharmacy Technician; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/12/12

  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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