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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 Statement of Issues
13 Against:

14 **LYUBA OLEKSANDROVNA**
15 **KOLOMIYETS, A.K.A.**
16 **LYUBOV KOLOMIYETS**

17 **Pharmacy Technician License Applicant**
18 **Respondent.**

Case No. 4291

OAH No. 2013020641

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

19 **FINDINGS OF FACT**

20 1. On or about September 12, 2012, Complainant Virginia Herold, in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
22 filed Statement of Issues No. 4291 against Lyuba Oleksandrovna Kolomiyets, a.k.a. Lyubov
23 Kolomiyets (Respondent) before the Board of Pharmacy.

24 2. On or about May 13, 2011, Respondent filed an application dated March 9, 2011,
25 with the Board of Pharmacy (Board) to obtain a Pharmacy Technician License.

26 3. On or about February 14, 2012, the Board issued a letter denying Respondent's
27 application for Pharmacy Technician License (Application). On or about February 17, 2012,
28 Respondent appealed the Board's denial of her Application and requested a hearing.

1 On or about September 25, 2012, an employee of the Department of Justice, served
by Certified and First Class Mail a copy of the Statement of Issues No. 4291, Statement to

Respondent, Notice of Defense, Request for Discovery, Government Code sections 11507.5, 11507.6, and 11507.7, and Disciplinary Guidelines to Respondent's address on the Application form, which was: 4521 Greenholme Drive, Apt. 3, Sacramento, CA 95842. A copy of the Statement of Issues is attached as exhibit A, and is incorporated herein by reference.

5. Service of the Statement of Issues was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

6. On or about February 17, 2012, Respondent appealed the denial of her application and requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's, updated address of: 535 Arlington Circle, Rio Linda, CA 95673, and it informed her that an administrative hearing in this matter was scheduled for October 7, 2013. Respondent failed to appear at that hearing.

7. Government Code section 11506 states, in pertinent part:

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

8. Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing based upon the allegation set forth in the Statement of Issues and Respondent's failure to establish entitlement to issuance of a license.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Lyuba Oleksandrovna Kolomiyets has subjected her Application for a Pharmacy Technician License to denial.

1 2. Service of Statement of Issues No. 4291 and related documents was proper and in
2 accordance with the law.

3 3. The agency has jurisdiction to adjudicate this case by default.

4 4. The Board of Pharmacy is authorized to deny Respondent's application for licensure
5 based upon the following violations alleged in the Statement of Issues:

6 a. Respondent violated Business and Professions Code section Code sections 480,
7 subds. (a)(1) and (a)(3); 4300, subd. (c); and 4301, subd. (l) in that Respondent has been
8 convicted of the following crime that are substantially related to the qualifications, functions, and
9 duties of a licensed pharmacy technician. Respondent was convicted by plea of nolo contendere
10 of violating Vehicle Code section 12500(A) (driving a motor vehicle without a valid driver's
11 license), a misdemeanor.

12 b. Respondent violated Business and Professions Code sections 480, subd. (a)(2);
13 4300, subd. (c); and 4301, subd. (f) in that Respondent engaged in acts involving moral turpitude,
14 dishonesty, fraud or deceit. The circumstances are that when Respondent signed her Application,
15 she certified under penalty of perjury on page 3, item 6, that she had not been convicted of a
16 crime. In fact, Respondent had been convicted of a crime.

17 c. Respondent violated Business and Professions Code sections 480, subd. (c);
18 4300, subd. (c); and 4301, subd. (g) in that Respondent made a false representation on her
19 Application.

20 d. Respondent violated Business and Professions Code sections 480, subd. (a)(3);
21 4300, subd. (c); and 4301, subd. (j) in that Respondent possessed controlled substances
22 unlawfully. The circumstances are that when Respondent was arrested for the crime detailed
23 above, Respondent was unlawfully in possession of controlled substances: oxycodone,
24 hydrocodone, and amphetamine.

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ORDER

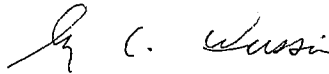
IT IS SO ORDERED that the application of Respondent Lyuba Oleksandrovna Kolomiyets is hereby denied.

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 on January 17, 2014.

It is so ORDERED ON December 18, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


By _____
STAN C. WEISSER
Board President

DOJ docket number:SA2012105428
11195569.DOC

Attachment:

Exhibit A: Statement of Issues No.4291

Exhibit A

Statement of Issues No. 4291

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3 GEOFFREY S. ALLEN
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7 E-mail: Geoffrey.Allen@doj.ca.gov
Attorneys for Complainant

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

STATEMENT OF ISSUES

16 Respondent.

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

3. This Statement of Issues 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 unless otherwise indicated.

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

(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.

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

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

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

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

6

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

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

12

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

15

16 (l) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction shall
22 be conclusive evidence only of the fact that the conviction occurred. The board may
23 inquire into the circumstances surrounding the commission of the crime, in order to
24 fix the degree of discipline or, in the case of a conviction not involving controlled
25 substances or dangerous drugs, to determine if the conviction is of an offense
26 substantially related to the qualifications, functions, and duties of a licensee under this
27 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
28 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.

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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
29 public health, safety, or welfare.

30 8. Section 125.3 of the Code states, in pertinent part, that the Board may request the
31 administrative law judge to direct a licentiate found to have committed a violation or violations of
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
33 enforcement of the case.

34 CONTROLLED SUBSTANCES AT ISSUE

35 9. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
36 Code section 11055(b)(1)(M), and a dangerous drug within the meaning of Code section 4022, in
37 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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1 THIRD CAUSE FOR DENIAL OF APPLICATION

2 (False Representation)

3 14. Respondent's application is subject to denial under Code sections 480, subd. (c);
4 4300, subd. (c); and 4301, subd. (g) in that Respondent made a false representation on her
5 Application. The circumstances are detailed above in paragraph 13.

6 FOURTH CAUSE FOR DENIAL OF APPLICATION

7 (Unlawful Possession of Controlled Substances)

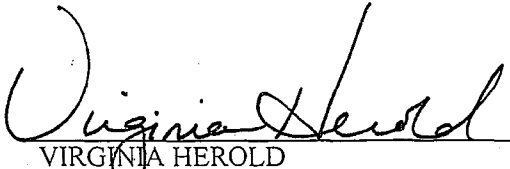
8 15. Respondent's application is subject to denial under Code sections 480, subd. (a)(3);
9 4300, subd. (c); and 4301, subd. (j) in that Respondent possessed controlled substances
10 unlawfully. The circumstances are that when Respondent was arrested for the crime detailed
11 above in paragraph 12, Respondent was unlawfully in possession of controlled substances:
12 oxycodone, hydrocodone, and amphetamine.

13 PRAYER

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

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

19
20 DATED: 9/12/12


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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