



State Medical Board of Ohio

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June 13, 2001

Leonard Krivitsky, M.D.
709 Chew Street
Allentown, PA 18102

Dear Doctor Krivitsky:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 13, 2001, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG: jam
Enclosures

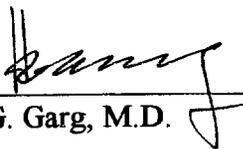
CERTIFIED MAIL RECEIPT NO. 7000 0600 0022 4402 7488
RETURN RECEIPT REQUESTED

Mailed 6-14-01

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 13, 2001, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Leonard Krivitsky, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.



Anand G. Garg, M.D.
Secretary

(SEAL)

JUNE 13, 2001
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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LEONARD KRIVITSKY, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 13, 2001.

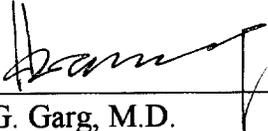
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The application of Leonard Krivitsky, M.D., for restoration of his certificate to practice medicine and surgery in Ohio is hereby DENIED.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)



Anand G. Garg, M.D.
Secretary

JUNE 13, 2001
Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF LEONARD KRIVITSKY, M.D.**

The Matter of Leonard Krivitsky, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on March 6, 2001.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated January 10, 2001, the State Medical Board of Ohio [Board] notified Leonard Krivitsky, M.D., that it had proposed to take disciplinary action against, or refuse to register or reinstate, his certificate to practice medicine and surgery in Ohio. The Board's action was based on the following allegations:
1. On or about August 21, 2000, Dr. Krivitsky filed an application for restoration of his certificate to practice medicine and surgery [Restoration Application] with the Board. That Restoration Application is currently pending.
 2. On or about November 9, 1988, the Board entered an Order revoking Dr. Krivitsky's certificate, staying such revocation, and indefinitely suspending the certificate for at least six months. The Order further provided conditions for reinstatement of the certificate, as well as probationary terms and conditions upon reinstatement. The Order was based upon Dr. Krivitsky's treatment of an undercover Board investigator posing as a patient and the Board's finding that Dr. Krivitsky had violated Sections 4731.22(B)(2), (B)(3) and (B)(6), Ohio Revised Code.
 3. On or about July 11, 1990, the Board revoked Dr. Krivitsky's certificate to practice medicine and surgery in the State of Ohio based upon Dr. Krivitsky's having been found guilty of twenty-eight felony counts of trafficking in drugs, in violation of Section 2925.03, Ohio Revised Code; one felony count of Medicaid fraud, in violation of Section 2913.40(B), Ohio Revised Code; and one felony count of theft, in violation of Section 2913.02(A)(3), Ohio Revised Code. The Board concluded that the above judicial findings of guilt constituted violations of Sections 4731.22(B)(9), (B)(3), (B)(5), and (B)(8), Ohio Revised Code

The Board alleged that Dr. Krivitsky's conduct constituted the following:

- “[f]ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other

modalities for treatment of disease,' as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code, as in effect prior to March 9, 1999."

- "[f]ailure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease,' as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code."
- "[s]elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes,' as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999."
- "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes,' as that clause is used in Section 4731.22(B)(3), Ohio Revised Code."
- "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,' as that clause is used in Section 4731.22(B)(6), Ohio Revised Code."
- "[a] plea of guilty to, or a judicial finding of guilt of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2925.03, Ohio Revised Code, Trafficking in drugs, Section 2913.02(A)(3), Ohio Revised Code, Theft, and Section 2913.40(B), Ohio Revised Code, Medicaid Fraud."
- "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section 2925.03, Ohio Revised Code, Trafficking in drugs, Section 2913.02(A)(3), Ohio Revised Code, Theft, and Section 2913.40(B), Ohio Revised Code, Medicaid Fraud."
- "a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2925.03, Ohio Revised Code, Trafficking in drugs."
- "a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.03, Ohio Revised Code, Trafficking in drugs."

- “‘publishing a false, fraudulent, deceptive, or misleading statement,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.”
- “‘[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.”
- “‘[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice,’ as that clause is used in Section 4731.22(B)(8), Ohio Revised Code, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.”

Accordingly, the Board advised Dr. Krivitsky of his right to request a hearing in this matter. (State’s Exhibit 1A).

- B. On January 16, 2001, Dr. Krivitsky submitted a written hearing request. (State’s Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.
- B. On behalf of the Respondent: Dr. Krivitsky, having been apprised of his right to be represented by counsel, appeared on his own behalf.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent

- A. Cheri Papier
B. Leonard Krivitsky, M.D.
C. Jake Krivitsky, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1H: Procedural exhibits.
2. State's Exhibit 2: Certified copy of Dr. Krivitsky's Application for Restoration received by the Board on August 21, 2000.
3. State's Exhibits 3 and 7 through 9: Certified copies of documents filed with the Clerk of the Franklin County Court of Common Pleas in *State of Ohio vs. Leonid Krivitskiy a.k.a., Leonard Krivitsky*, Case No. 89CR03-1250A, and related appeals.
4. State's Exhibit 4: Certified copy of the Board's November 9, 1988, Entry of Order filed in The Matter of Leonid Krivitskiy, M.D., a.k.a. Leonard Krivitsky, M.D.
5. State's Exhibit 5: Certified copy of the Board's July 11, 1990, Entry of Order filed in The Matter of Leonid Krivitskiy, M.D.
6. State's Exhibit 6: Copy of a March 8, 2001, letter from Ms. Albers to Dr. Krivitsky.

B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of the March 27, 2000, Adjudication and Order filed in the Commonwealth of Pennsylvania Department of State before the State Board of Medicine in the Matter of the Petition for Reinstatement of the License to Practice Medicine and Surgery of Leonard Krivitsky, M.D.
2. Respondent's Exhibit B: Copies of Dr. Krivitsky's certificate to practice medicine and surgery in the Commonwealth of Pennsylvania and Dr. Krivitsky's Controlled Substance Registration Certificate issued by the United States Drug Enforcement Administration.
3. Respondent's Exhibit C: Copies of Dr. Krivitsky's Final Release from Parole Supervision issued by the Adult Parole Authority, Columbus, Ohio, effective on January 22, 1993.
4. Respondent's Exhibits D through M and R: Copies of letters written to Dr. Krivitsky or on behalf of Dr. Krivitsky commending his work in various capacities. (3 pp.)

5. Respondent's Exhibit N: Copy of a June 3, 1993, certificate from the Governor of Oklahoma declaring Dr. Krivitsky an honorary citizen of the State of Oklahoma.
6. Respondent's Exhibits O through Q and Z: Copies of documents pertaining to Dr. Krivitsky's position as an interpreter for the United States Government.
7. Respondent's Exhibit S: Copy of a December 22, 1999, letter from the Special Purpose Examination [SPEX] of the Federation of the State Medical Boards of the U.S., documenting Dr. Krivitsky's passing the examination with a score of 81.
8. Respondent's Exhibits T through V: Copies of letters of support written on behalf of Dr. Krivitsky.
9. Respondent's Exhibit W: Copy of a February 15, 2001, letter to the Board of Medical Examiners of Puerto Rico from Dr. Krivitsky requesting licensure in the Commonwealth of Puerto Rico.
10. Respondent's Exhibit X: Copy of an August 3, 2000, letter to Dr. Krivitsky from the American Board of Internal Medicine.
11. Respondent's Exhibit Y: Copies of medicine-oriented newspaper articles written by Dr. Krivitsky in the Allentown, Pennsylvania, Spanish language newspaper.

B. Presented by the Board:

Board Exhibit A: Copy of an April 12, 2001, Entry reopening the hearing record.

PROCEDURAL MATTERS

1. At hearing, the parties requested an opportunity to submit an additional document. Accordingly, the hearing record was held open until March 16, 2001, for submission of the additional document. See Hearing Transcript at 116-117.
2. On April 12, 2001, the Hearing Examiner determined that additional information would be necessary to complete the hearing record. Accordingly, the hearing record was reopened. See Board Exhibit A. On April 16, 2001, the State submitted the additional information. See State's Exhibit 9. On April 19, 2001, a telephone conference was held among Dr. Krivitsky, the Assistant Attorney General, and the Hearing Examiner. At that time, Dr. Krivitsky advised that he would not object to the admission of the additional information. Accordingly, the hearing record closed at that time.

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SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. Leonard Krivitsky, M.D., was born in Fergana in the Soviet Union. In June 1975, Dr. Krivitsky graduated from the Orenburg Medical School in Russia. (State's Exhibit [St. Ex.] 2 at 2). Thereafter, Dr. Krivitsky immigrated to the United States. He completed a one-year internship at Youngtown Hospital in Youngstown, Ohio, followed by residency in internal medicine at St. Thomas Hospital in Akron, Ohio. Following his residency, Dr. Krivitsky relocated to Columbus, Ohio, and started a practice in internal and general medicine. (Hearing Transcript [Tr.] at 74-75; Respondent's Exhibit [Resp. Ex.] A at 2).

Dr. Krivitsky was licensed in the State of Pennsylvania in February 1981. He was licensed in Ohio in October 1981. (St. Ex. 2 at 7).

2. On December 4, 1985, the Board issued a notice of opportunity for hearing to Dr. Krivitsky proposing to take disciplinary action against his certificate to practice medicine and surgery in Ohio. (St. Ex. 4). After an adjudicatory hearing that took place in March and April 1986, with an additional day of hearing in May 1988, the Board made the following Findings of Fact:
 - a. On five occasions in 1984 and 1985, Mr. Eley, an undercover Board investigator, presented to Dr. Krivitsky's office under an assumed name. Mr. Eley told Dr. Krivitsky that he was from out-of-town, and that his out-of-town physician had prescribed him Librium. Mr. Eley asked Dr. Krivitsky for something "to make him 'feel good.'" Dr. Krivitsky told Mr. Eley that prescribing drugs to make a person "feel good" was against the law. Mr. Eley then asked Dr. Krivitsky for something to make him sleep. Without further investigation as to the cause or extent of Mr. Eley's sleeping problems, Dr. Krivitsky agreed to prescribe Dalmane, a Schedule IV controlled substance. Dr. Krivitsky performed a minimal physical examination and took a brief history. (St. Ex. 4 at 9).

Mr. Eley then made a "comment regarding his prior use of medications to go to sleep and to wake up." In response, Dr. Krivitsky advised that it was against the law to prescribe stimulants for purposes of staying awake, and stated that stimulants could only be prescribed for weight loss purposes. Mr. Eley stated that he was overweight. Dr. Krivitsky advised that he did not accept welfare patients for weight loss treatment and that the cost was \$25.00. Mr. Eley stated that he would return the following

week when he had the money. Before Mr. Eley left the office, Dr. Krivitsky gave him Librium and Dalmane, both Schedule IV controlled substances. (St. Ex. 4 at 9-10).

Dr. Krivitsky's patient records indicate that the physical examination consisted of checking vital signs and reflexes. Dr. Krivitsky recorded "'no sleep' as present ailment; 'nervousness, insomnia' as diagnosis; and the Librium and Dalmane prescriptions as treatment." (St. Ex. 4 at 10).

- b. On Mr. Eley's next visit, Dr. Krivitsky recorded no physical examination other than a weight of 214 pounds. Mr. Eley had been fully dressed and wearing a coat and hat when weighed by Dr. Krivitsky. Dr. Krivitsky prescribed thirty Adipex-P, a Schedule IV controlled substance anorectic; seven Dalmane; and twenty-one Librium. Dr. Krivitsky also gave Mr. Eley a preprinted weight loss pamphlet and advised that Mr. Eley would receive no additional controlled substance anorectics unless he lost weight. (St. Ex. 4 at 10).
- c. Mr. Eley returned to Dr. Krivitsky's office eight days later. Dr. Krivitsky refused to provide any additional Adipex-P since he had previously prescribed enough to last thirty days. Dr. Krivitsky did give Mr. Eley a one-week supply of Dalmane and Librium. Dr. Krivitsky did not perform any physical examination, and the patient record states only "c/o same." When Mr. Eley requested a month's supply of medications rather than a week's supply, Dr. Krivitsky wrote four additional prescriptions each containing one week's supply of medication. Dr. Krivitsky post-dated the prescriptions for the four subsequent weeks. (St. Ex. 4 at 10).
- d. Mr. Eley next returned to Dr. Krivitsky's office in September 1985, nine months later. Mr. Eley voiced no medical complaint, and Dr. Krivitsky did not inquire. Dr. Krivitsky advised Mr. Eley that he could not prescribe Librium and Dalmane together, but that he would be willing to prescribe a one-month supply of Adipex-P and Librium. Dr. Krivitsky recorded a weight of 223 pounds, but recorded no other physical examination. Dr. Krivitsky prescribed Adipex-P and Librium. (St. Ex. 4 at 11).
- e. Mr. Eley returned one month later. Dr. Krivitsky weighted Mr. Eley at 222 pounds, and advised Mr. Eley that he could no longer prescribe an anorectic. Mr. Eley responded that he had only taken the anorectic to keep him awake. Dr. Krivitsky stated that he could not give him Adipex-P unless he was using it for weight reduction. (St. Ex. 4 at 11).

Mr. Eley also requested something for sleep. Dr. Krivitsky asked if Mr. Eley was depressed, and advised that Adipex-P could be prescribed either for weight loss or for depression. Mr. Eley denied that he was depressed. Dr. Krivitsky then offered to prescribe Soma three times daily "'to relax [Mr. Eley's] muscles.'" Dr. Krivitsky wrote post-dated prescriptions for Librium and Soma. (St. Ex. 4 at 11).

Mr. Eley then asked Dr. Krivitsky for a prescription for Librium for Mr. Eley's daughter. Dr. Krivitsky refused to prescribe a controlled substance without first seeing the intended recipient. Mr. Eley paid \$35.00 and left the office. (St. Ex. 4 at 11).

Mr. Eley returned to Dr. Krivitsky's office five minutes later. At that time, Mr. Eley asked if he could get "the 'same thing' if he was depressed." Dr. Krivitsky advised that Mr. Eley had denied being depressed several times and that he could not "change his story." Nevertheless, Dr. Krivitsky wrote prescriptions for Adipex-P when Mr. Eley promised that he would lose weight. (St. Ex. 4 at 12).

- f. At some point during the investigation of Dr. Krivitsky, an undercover police officer went to Dr. Krivitsky's office pretending to be Mr. Eley's daughter. The undercover police officer stated that she wanted to lose weight, but Dr. Krivitsky refused to prescribe anything for her. (St. Ex. 4 at 15).

The Board concluded that Dr. Krivitsky had violated Section 4731.22(B)(2) Ohio Revised Code ["failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease"]; Section 4731.22(B)(3), Ohio Revised Code, ["selling prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes"]; and Section 4731.22(B)(6) Ohio Revised Code, ["a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."] (St. Ex. 4).

On November 9, 1988, the Board entered an Order revoking Dr. Krivitsky's certificate, staying the revocation, and indefinitely suspending his certificate for at least six months. The Order provided that, in order for the Board to consider reinstatement of his certificate, Dr. Krivitsky would have to successfully complete an approved pharmacology course and achieve a passing score on the Test of Spoken English. Further, the Order provided that, upon reinstatement of his certificate, Dr. Krivitsky would be subject to probationary conditions, which included the requirement that Dr. Krivitsky submit a log of all controlled substances which he prescribed, dispensed or administered, and that he comply with an approved plan of practice limited to a supervised structured environment. (St. Ex. 4).

3. On December 22, 1989, Dr. Krivitsky was found guilty in the Franklin County [Ohio] Court of Common Pleas of twenty-eight felony counts of trafficking in drugs, in violation of Section 2925.03, Ohio Revised Code; one felony count of Medicaid fraud, in violation of Section 2913.40(B), Ohio Revised Code; and one felony count of theft, in violation of Section 2913.02(A)(3), Ohio Revised Code. On February 13, 1990, the court sentenced Dr. Krivitsky to incarceration of not less than six and one half years nor more than fifteen

years, with two years mandatory incarceration. The court further sentenced Dr. Krivitsky to pay mandatory fines totaling \$75,500, investigatory costs of more than \$13,000, and restitution of more than \$34,000. The court later suspended the mandatory fines based on Dr. Krivitsky's indigency. (St. Exs. 7, 8).

4. In an appeal before the Franklin County Court of Appeals, the facts underlying the conviction were set forth, in part, as follows:
 - a. Dr. Krivitsky was tried with a co-defendant who was his ex-wife and who served as the receptionist for his office. The State presented evidence that a group of fifteen undercover officers, including police detectives, state Medicaid fraud agents, and agents from the office of the Attorney General, had participated in a nine-month investigation of Dr. Krivitsky's medical practice. Narcotics agents had been receiving pharmacist's complaints against Dr. Krivitsky's practice since 1983. (St. Ex. 9 at 2-3).
 - b. During the course of the investigation, undercover agents presented to Dr. Krivitsky's office and received prescriptions "in exchange for cash without receiving any medical services." In addition, Dr. Krivitsky's receptionist made group appointments for as many as eleven undercover agents at one time. The receptionist asked each agent to complete a medical history form. Dr. Krivitsky reviewed the form, performed a brief examination, and prescribed either diazepam [Valium] or Xanax, both Schedule IV controlled substances. (St. Ex. 9 at 3-4).
 - c. "The agents testified that their initial office visits with [Dr. Krivitsky] lasted between three to six minutes, excluding time spent in the waiting room, and that subsequent visits lasted one to four minutes. Agents posing as patients saw [Dr. Krivitsky] a total of one hundred four times during the investigation, during which they were in [Dr. Krivitsky's] examination room a total of two hundred sixty-seven minutes, or an average of two minutes thirty-six seconds per patient, per visit." (St. Ex. 9 at 3-4).
 - d. An expert testified at trial that "it would be impossible to diagnose an insomnia or anxiety disorder on the basis of a two minute office visit, and that while diazepam or Xanax are appropriate to prescribe for such symptoms, they are very addictive drugs and it is not standard medical practice to prescribe refills for these drugs every two weeks for months at a time as [Dr. Krivitsky] did." (St. Ex. 9 at 4-5).
 - e. Moreover, Dr. Krivitsky billed Medicaid \$18.00 to \$28.00 per visit, under billing codes which required as much as one hour of patient care. Dr. Krivitsky charged patients paying cash \$25.00 per visit. In addition, Dr. Krivitsky billed Medicaid for office visits that did not occur. "In fact, of a total of one hundred four scheduled visits, agents were physically present only seventy-one times. Yet [Dr. Krivitsky] prescribed for them in their absence." (St. Ex. 9 at 4).

5. Regarding the criminal conviction, Dr. Krivitsky testified at the present hearing as follows:

Yes, I was convicted of all these offenses; and yes, I was prescribing controlled substances to the undercover officers who were coming, and they were complaining that they were unable to sleep and they were nervous. And no, I did not take sufficient time to examine them, sufficient time to try and find out why they were nervous, why they could not sleep. I did not do any of these things that the physician is supposed to do as far as ascertaining the patient's condition, the patient's history, especially before prescribing a controlled substance.

(Tr. at 27). When asked why he had not done those things, Dr. Krivitsky replied:

I did not realize the necessity of it. I simply – even though today I say that I did not of course intend to traffic any drugs with them, but since I prescribed controlled substances without adequately examining them without taking the adequate history, yes, it equals to drug trafficking in my mind, especially now when I thought about it.

There's absolutely no question about that, and yeah, I did all that, and what's worse what I did is that this patient – these patients were actually coming as a group, not like one or two patients, but they were coming several at a time giving me the same complaints, and I would still – and another thing is that I was under impression that the medications that I prescribed, which was diazepam, and Xanax, which are schedule IV substances which are not considered very strong, and I just didn't realize that it did not matter, that they were still controlled substances. They still had to go under the same rules as any other controlled substances * * * otherwise it would constitute the drug trafficking.

(Tr. at 27-29).

6. Dr. Krivitsky was incarcerated from July 1990 through December 1991. (St. Ex. 2 at 5). Although the court had sentenced Dr. Krivitsky to incarceration of not less than six and one half years nor more than fifteen years, with two years mandatory incarceration, Dr. Krivitsky was granted shock parole after serving less than two years. (Tr. at 29-32).

On January 22, 1993, Dr. Krivitsky was released from parole supervision, having conducted himself satisfactorily during his parole. Dr. Krivitsky testified that, while on parole, his parole officer had had so much trust in him that she had allowed Dr. Krivitsky to travel out of state for weeks at a time for employment purposes. (Resp. Ex. C; Tr. at 31-34).

7. On March 4, 1990, the Board issued a notice of opportunity for hearing to Dr. Krivitsky, proposing to take disciplinary action based on his criminal conviction. On July 11, 1990,

after an adjudicatory hearing, the Board revoked Dr. Krivitsky's certificate to practice medicine and surgery in the State of Ohio. The Board concluded that the convictions for trafficking in drugs, Medicaid fraud, and theft, had been offenses committed in the course of practice and had violated Sections 4731.22(B)(9), (B)(3), (B)(5), and (B)(8) of the Ohio Revised Code. (St. Ex. 5).

8. On July 16, 1992, the Commonwealth of Pennsylvania State Board of Medicine [Pennsylvania Board] automatically suspended Dr. Krivitsky's certificate to practice in that state based on Dr. Krivitsky's 1990 conviction. (Resp. Ex. A at 2).
9. In 1992, Dr. Krivitsky began employment as an English/Russian interpreter for the United States Department of State, the United States Information Agency, the International Law Institute, and the Immigration Court of the United States under contract from the United States Department of Justice. In order to do so, Dr. Krivitsky took and passed a number of examinations. He also advised the agencies of his criminal conviction in Ohio and received security clearance. During the course of his service, Dr. Krivitsky interpreted for United States Senators and Congressmen, for Governors of Russian states, for a delegation from the Russian Parliament, and for various other government groups. Dr. Krivitsky also served as an interpreter for Louis Freeh, Director of the Federal Bureau of Investigation. (Tr. at 34-44; St. Ex. 2 at 5; St. Ex. 5 at 3).

Dr. Krivitsky submitted numerous letters commending him for his work translating the Russian and English languages on behalf of various government and social agencies, including the United States House of Representatives. (Resp. Exs. D, F-J and M). On June 3, 1993, the governor of the State of Oklahoma certified Dr. Krivitsky as an "honorary citizen of the State of Oklahoma." (Resp. Ex. N).

10. In October 1996, the United States Department of State revoked Dr. Krivitsky's security clearance to act as a translator. The revocation was based on Dr. Krivitsky's 1990 criminal convictions. The notices sent to Dr. Krivitsky did not explain the rationale for the revocation after so many years of service. (Tr. at 44-46; St. Ex. 2 at 5; St. Ex. 5 at 3; Resp. Exs. P, Z).

From 1996 through 1999, Dr. Krivitsky worked as an interpreter for private companies and also as a waiter at restaurants in Washington, D.C. (Tr. at 47-48; St. Ex. 5 at 3; Resp. Ex. R).

11. In 1999, Dr. Krivitsky relocated to Philadelphia to study for the Special Purpose Examination [SPEX] offered by the Federation of State Medical Boards. Dr. Krivitsky took the examination on December 22, 1999, and passed with a score of 81. (St. Ex. 5 at 3; Resp. Ex. S).

12. In January 2000, Dr. Krivitsky submitted to the Pennsylvania Board a petition for restoration of his certificate to practice medicine and surgery in that State. (St. Ex. 5 at 3-5). Pennsylvania Statutes, Section 422.43(b) provides in pertinent part, as follows:

Any person whose license, certificate or registration has been suspended or revoked because of a felony conviction under * * * The Controlled Substance, Drug, Device and Cosmetic Act, or similar law of another jurisdiction, may apply for reinstatement after a period of at least ten years has elapsed from the date of the conviction. The board may reinstate the license if the board is satisfied that the person has made significant progress in personal rehabilitation since the conviction such that his reinstatement should not be expected to create a substantial risk of harm to the health and safety of the patients or the public or a substantial risk of further criminal violation and if the person meets all other licensing qualifications of this act, including the examination requirement.

(St. Ex. 5 at 6).

Dr. Krivitsky's request for restoration of his Pennsylvania license was the subject of an administrative hearing before the Pennsylvania Board. The Pennsylvania Board hearing examiner noted that:

[Dr. Krivitsky] testified with respect to his gainful employment since his early release from incarceration and his diligent efforts to keep abreast of ever-changing medical knowledge. He also articulated with clarity his understanding of what changes he must make in further treatment of patients so as to comply not only with the law but also with sound and acceptable medical practice. Through his testimony and character evidence offered, [Dr. Krivitsky] has demonstrated that he has made significant progress in personal rehabilitation, that he is not likely to commit further criminal acts of the sort which resulted in his 1989 [sic] conviction, and that his return to practice would not create a substantial risk of harm to patients or the public.

(Resp. Ex. A at 7).

After the hearing, the Pennsylvania Board found that Dr. Krivitsky was "aware of the need to obtain complete patient histories and perform physical examination to determine objective medical justification before prescribing benzodiazepines or any other controlled substances." The Pennsylvania Board concluded that Dr. Krivitsky had "demonstrated that he meets the qualifications under [Pennsylvania law] for reinstatement of his license."
(Resp. Ex. A at 3-5).

Effective on or about April 27, 2000, the Pennsylvania Board reinstated Dr. Krivitsky's license to practice medicine and surgery in the Commonwealth of Pennsylvania. (Resp. Ex. A at 8). The Pennsylvania Board granted Dr. Krivitsky an unrestricted license, with neither probationary nor monitoring provisions. Moreover, Dr. Krivitsky has been accepted as a Medicaid provider and as a provider by a number of HMO's and by Blue Cross/Blue Shield. (Tr. at 103-104). The Pennsylvania Board has since renewed Dr. Krivitsky's certificate. (Tr. at 106-107).

On December 22, 2000, the United States Department of Justice Drug Enforcement Administration issued Dr. Krivitsky a Controlled Substance Registration Certificate. (Resp. Ex. B).

13. On or about August 21, 2000, Dr. Krivitsky submitted to the Board an application for restoration of his certificate to practice medicine and surgery in Ohio. With his restoration application, Dr. Krivitsky enclosed a letter to the Board. In the letter, Dr. Krivitsky advised, in part:

It would be wrong for me to continue this letter without first stating that my actions leading to the conviction were totally unacceptable. It was unacceptably wrong to prescribe controlled substances to a group of people for a prolonged period of time without adequately examining them and keeping appropriate records. It is difficult for me even now to come up with an explanation for these actions, and there is definitely no excuse for them. It is my job at this time to demonstrate to the board that I am a different person now, more mature, more responsible, more willing and able to critically analyze my actions and my mistakes. Someone said that people can be generally divided into three groups: those who learn the easy way, those who learn the hard way, and those who never learn. My behavior more than 10 years ago demonstrated with devastating clarity that, at least at that time of my life, I did not belong to group number one. It is up to me to demonstrate now, more than 10 years later, that I also do not belong to group number three.

(St. Ex. 2 at 6).

14. Dr. Krivitsky has been practicing medicine in Allentown, Pennsylvania, since June 2000, seeing approximately twenty patients per week. (Tr. at 70-71; St. Ex. 2 at 5). Dr. Krivitsky's patient population consists largely of Hispanic immigrants to the United States. Dr. Krivitsky testified that he has been striving to be beneficial to his community. Therefore, has been diligently studying the Spanish language. Dr. Krivitsky has also been writing newspaper articles on medical topics for the local Hispanic newspaper. The topics include: heart attacks, alcohol abuse, HIV infection, smoking and chronic lung disease, drug abuse, acute and chronic hepatitis, and diabetes. (Tr. at 57-59, 68-70; Resp. Exs. W, Y).

Dr. Krivitsky also testified at length as to how he now handles drug-seeking behavior. He stated that he rarely writes a prescription for a controlled substance. Should a patient request something for which he would have prescribed a controlled substance in the past, Dr. Krivitsky now uses alternative medications, such as trazodone for sleep. Moreover, patients who come to him already taking controlled substances are weaned to non-controlled medications. Dr. Krivitsky testified that he was amazed when he started practicing in Allentown that more patients were not coming to him asking for controlled substances. At first, he wondered if there were somehow more drug addicts in Columbus than in Allentown. He stated that, after thinking about the differences, he realized that the difference was in him. He realized that he no longer has a reputation for prescribing controlled substances and, therefore, he is not attracting drug-seeking patients. (Tr. at 60-63, 65-66).

Dr. Krivitsky testified that he does not have hospital privileges because hospitals require board certification. (Tr. at 107).

15. Dr. Krivitsky submitted letters of support from peers. (Resp. Exs. T-V). Among the letters, Luis Campos, M.D., of Allentown, Pennsylvania, advised that he had worked with Dr. Krivitsky when Dr. Krivitsky first returned to practice in Pennsylvania. Dr. Campos further wrote as follows:

I had an opportunity to personally observe Dr. Krivitsky's work, and I can assure you that he is an honest, hardworking individual with good medical knowledge and bedside manners.

(Resp. Ex. V).

16. In an August 3, 2000, letter from the American Board of Internal Medicine, Dr. Krivitsky was advised that he would not be eligible to apply for admission to a future certifying examination in internal medicine until he could demonstrate that his medical license in the States of Ohio and Pennsylvania had been reinstated without conditions or restrictions. (Resp. Ex. X).

Dr. Krivitsky testified that one of the reasons he is seeking restoration of his Ohio license is that he hopes to someday take the certifying examination in internal medicine. Dr. Krivitsky acknowledged that, even if his Ohio license was restored, the Board would likely impose extensive probationary conditions. He stated that, if that were to happen, he would someday complete his probationary period and then be eligible to take the certifying examination. Dr. Krivitsky testified that he wanted board certification so that he would be better able to serve his community and would be eligible for hospital privileges. (Tr. at 63-65).

17. Cheri Papier testified at hearing on behalf of Dr. Krivitsky. Ms. Papier testified that she is a public health educator and epidemiologist. (Tr. at 17, 24).

Ms. Papier testified that that she has known Dr. Krivitsky since his release from prison in 1991. She stated that she had been volunteering with Jewish Family Services and, in that capacity, had been helping members of the Russian Jewish community to find employment in Columbus. Ms. Papier stated that Dr. Krivitsky had contacted her for assistance in finding employment in interpreting or translating the Russian/English languages. Ms. Papier stated that she had found positions for Dr. Krivitsky and that he had performed exceedingly well. (Tr. at 17-20).

Ms. Papier further stated that she has maintained contact with Dr. Krivitsky over the years. She has been aware of the work he performed for the United States Government. She also stated that she has been aware of Dr. Krivitsky's striving to maintain his medical skills through continuing education. Ms. Papier concluded that Dr. Krivitsky would be an excellent addition to the medical community in Columbus. (Tr. at 21-22).

18. Dr. Krivitsky's father, Jake Krivitsky, M.D., testified on behalf of Dr. Krivitsky. Dr. Jake Krivitsky testified that he was a full professor and the Director of the Department of Obstetrics and Gynecology at a Russian medical school prior to his retirement. Since his retirement, Dr. Jake Krivitsky immigrated to the United States, and has been volunteering as an interpreter, at a children's hospital, and in a day care center. (Tr. at 109-110).

Dr. Jake Krivitsky testified that Dr. Krivitsky had been raised in a very repressive society in Russia. When Dr. Krivitsky came to the United States, he lost his way. Dr. Krivitsky had had no experience with a free society, and he had failed to appreciate that freedom must be supported by law. Dr. Jake Krivitsky further surmised that Dr. Krivitsky had not been psychologically or emotionally prepared to practice medicine. Nevertheless, Dr. Jake Krivitsky stated that, in the past ten years, Dr. Krivitsky has become better prepared to function as a medical doctor in this society. (Tr. at 111-112).

19. Dr. Krivitsky testified at hearing on his own behalf. Dr. Krivitsky testified that he was appearing before the Board, in part, to show that he now appreciates the severity of his earlier conduct. Dr. Krivitsky stated that he is now fully aware that his behavior in prescribing controlled substances to patients without fully examining them and without taking an adequate history constitutes drug trafficking. He further stated that he should have known there was a problem when patients came to him in groups, giving him similar complaints, and requesting controlled substances. Dr. Krivitsky stated that he had believed, at that time, that Schedule IV drugs like Xanax and Valium were not as serious as the higher scheduled drugs. But now he is aware that controlled substances are controlled for a reason and all controlled substances should be treated with the same consideration. (Tr. at 25-28; 75).

When told that Dr. Krivitsky's pattern of prescribing suggests the possibility that he was running a "pill mill," Dr. Krivitsky responded that that was too strong a description. Dr. Krivitsky stated that he knows now that he had not been prescribing medications appropriately, that he should have thoroughly investigated the patients' complaints, that he should have examined the patients in detail, and that he should have been suspicious of groups of patients all presenting with the same complaint. Dr. Krivitsky further testified that he should have been aware that patients were coming to him specifically for the purpose of obtaining drugs. He stated that he had not been aware, in part, because he had attended medical school in Russia. At that time, drug abuse was not a big problem in Russia; alcohol abuse was the problem. Moreover, Dr. Krivitsky stated that he had received very little education about drug abuse and drug-seeking behavior in medical school or in his internal medicine residency training. (Tr. at 85-88).

Dr. Krivitsky further explained that, even at that time, if a patient had come in offering to pay money for drugs, he would have recognized it as drug trafficking. But when patients complained of ailments for which the requested drugs were appropriate, he had believed he was helping the patient when he prescribed the drug. He stated that now he realizes that there is very little difference between the two situations. (Tr. at 90).

Dr. Krivitsky further testified as follows:

I cannot change the past. The past that Ms. Albers told you about, all this is true. And how it happened and why it happened, I ask myself this many times. Frankly, I don't have all the answers myself, but I think that not only my own stupidity and my own pridefulness to where I thought that everybody else was - - that I knew better than everybody else and that I might ignore warnings that the people gave me. And the people did give me warnings. I will even admit to that.

Right now I am a different person. I already realize all these things. I realize that when I write the prescription, this prescription is not a piece of paper on which several words are scribbled. I realize the prescription is a legal document to which I can be called upon to account at any time. And I'd better be able to account for that, why did I write on this piece of paper.

And even though I cannot change this past that happened before ten years ago, I did everything possible to change to the positive what happened after that, and I continue to do everything possible to change what happens now.

(Tr. at 66-67).

FINDINGS OF FACT

1. On August 21, 2000, Dr. Krivitsky filed an application for restoration of his certificate to practice medicine and surgery with the Board. That application is currently pending.
2. On November 9, 1988, the Board entered an Order revoking Dr. Krivitsky's certificate, staying the revocation, and indefinitely suspending his certificate for at least six months. The Order provided that, in order for the Board to consider reinstatement of his certificate, he would have to successfully complete an approved pharmacology course and achieve a passing score on the Test of Spoken English.

Further, the Order provided that, upon reinstatement of his certificate to practice medicine and surgery, Dr. Krivitsky would be subject to probationary terms which included that he submit a log of all controlled substances which he prescribed, dispensed or administered, and comply with an approved plan of practice limited to a supervised structured environment in which his activities would be overseen and supervised by another physician.

The Order was based upon Dr. Krivitsky's treatment of an undercover Board investigator posing as a patient and the Board's finding that Dr. Krivitsky had violated Sections 4731.22(B)(2), (B)(3) and (B)(6), Ohio Revised Code

3. On July 11, 1990, the Board revoked Dr. Krivitsky's certificate to practice medicine and surgery in the State of Ohio based upon Dr. Krivitsky's being found guilty of twenty-eight felony counts of trafficking in drugs, in violation of Section 2925.03, Ohio Revised Code; one felony count of Medicaid fraud, in violation of Section 2913.40(B), Ohio Revised Code; and one felony count of theft, in violation of Section 2913.02(A)(3), Ohio Revised Code. The Board concluded that the findings of guilt constituted violations of Sections 4731.22(B)(9), (B)(3), (B)(5), and (B)(8), Ohio Revised Code.

CONCLUSIONS OF LAW

1. The conduct of Leonard Krivitsky, M.D., as referenced in Findings of Fact 2 constitutes "[f]ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code, as in effect prior to March 9, 1999.
2. The conduct of Dr. Krivitsky, as referenced in Findings of Fact 2, constitutes "[f]ailure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for

treatment of disease,” as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

3. The conduct of Dr. Krivitsky, as referenced in Findings of Fact 2, constitutes “[s]elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes,” as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999.
4. The conduct of Dr. Krivitsky, as referenced in Findings of Fact 2, constitutes “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes,” as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.
5. The conduct of Dr. Krivitsky, as referenced in Findings of Fact 2, constitutes “[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.
6. The conduct of Dr. Krivitsky underlying the Board Order and the Franklin County Court of Common Pleas Entry, as referenced in Findings of Fact 3, constitutes “[a] plea of guilty to, or a judicial finding of guilt of, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2925.03, Ohio Revised Code, Trafficking in Drugs, Section 2913.02(A)(3), Ohio Revised Code, Theft, and Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.
7. The conduct of Dr. Krivitsky underlying the Board Order and the Franklin County Court of Common Pleas Entry, as referenced in Findings of Fact 3, constitutes “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section 2925.03, Ohio Revised Code, Trafficking in Drugs, Section 2913.02(A)(3), Ohio Revised Code, Theft, and Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.
8. The conduct of Dr. Krivitsky underlying the Board Order and the Franklin County Court of Common Pleas Entry, as referenced in Findings of Fact 3, constitutes “a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2925.03, Ohio Revised Code, Trafficking in Drugs.
9. The conduct of Dr. Krivitsky underlying the Board Order and the Franklin County Court of Common Pleas Entry, as referenced in Findings of Fact 3, constitutes “a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of

conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.03, Ohio Revised Code, Trafficking in Drugs.

10. The conduct of Dr. Krivitsky underlying the Board Order and the Franklin County Court of Common Pleas Entry, as referenced in Findings of Fact 3, constitutes "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.
11. The conduct of Dr. Krivitsky underlying the Board Order and the Franklin County Court of Common Pleas Entry, as referenced in Findings of Fact 3, constitutes "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.
12. The conduct of Dr. Krivitsky underlying the Board Order and the Franklin County Court of Common Pleas Entry, as referenced in Findings of Fact 3, constitutes "[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.

* * * * *

Dr. Krivitsky requested that the Board restore his certificate to practice medicine and surgery in Ohio, which had been revoked in 1990 based on his criminal convictions. Dr. Krivitsky's conduct underlying the criminal conviction was egregious. Moreover, his conduct placed patients in danger of harm and violated the laws of this state. Furthermore, the evidence indicates that Dr. Krivitsky's actions were motivated by financial gain. Accordingly, Dr. Krivitsky's offenses were so serious as to warrant a permanent denial of his application for restoration of his certificate.

Nevertheless, the Board may want to consider the significant mitigating circumstances presented in this matter. In many respects, Dr. Krivitsky presents a sympathetic case. Dr. Krivitsky acknowledged that his past conduct was absolutely inappropriate and he expresses sincere regret. Moreover, Dr. Krivitsky has made great strides in "turning his life around." He has worked diligently as a translator, and has received many commendations for his efforts. He has also worked conscientiously over the years to maintain his medical knowledge, and received an commendable score on his SPEX examination. Dr. Krivitsky has been practicing medicine in Pennsylvania for one year and, during that time, has devoted himself to his community. As

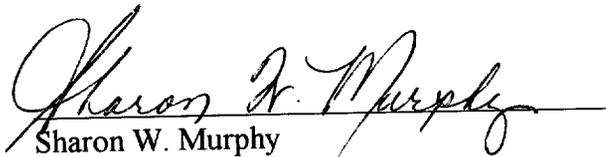
noted by the Pennsylvania Board, Dr. Krivitsky has demonstrated that he is not likely to commit further criminal acts and that his return to practice would not create a substantial risk of harm to patients or the public. Accordingly, Dr. Krivitsky has made admirable progress in his attempts to rehabilitate himself, which the Board may wish to consider.

PROPOSED ORDER

It is hereby ORDERED that:

The application of Leonard Krivitsky, M.D., for restoration of his certificate to practice medicine and surgery in Ohio is hereby DENIED.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.


Sharon W. Murphy
Attorney Hearing Examiner

2011.08.11 10:00 AM



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF JUNE 13, 2001

REPORTS AND RECOMMENDATIONS

Dr. Bhati announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Bhati asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matter of Angel L. Bruno, M.D.; Bert David Collier, Jr., M.D.; Thomas Joseph Delliquadri, M.T.; Leonard Krivitsky, M.D.; Sami I. Michael, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

Dr. Bhati asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

Dr. Bhati noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Bhati stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

LEONARD KRIVITSKY, M.D.

.....

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. MURPHY’S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF LEONARD KRIVITSKY, M.D. DR. STEINBERGH SECONDED THE MOTION.

.....

A vote was taken on Dr. Agresta’s motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

The motion carried.



State Medical Board of Ohio

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January 10, 2001

Leonard Krivitsky, M.D.
a.k.a. Leonid Krivitsky, M.D.
a.k.a. Leonid Krivitskiy, M.D.
709 Chew Street
Allentown, Pennsylvania 18102

Dear Doctor Krivitsky:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about August 21, 2000, you filed an application for restoration of your certificate to practice medicine and surgery (hereinafter "Restoration Application") with the State Medical Board of Ohio. That Restoration Application is currently pending.
- (2) On or about November 9, 1988, the State Medical Board of Ohio (hereinafter "Board") entered an Order revoking your certificate, staying such revocation, and indefinitely suspending your certificate for at least six (6) months. The Order provided that, in order for the Board to consider reinstatement of your certificate, you had to successfully complete an approved pharmacology course and achieve a passing score on the Test of Spoken English.

Further, the Order provided that upon reinstatement of your certificate to practice medicine and surgery, you were subject to probationary terms, conditions, and limitations including that you submit a log of all controlled substances which you prescribed, dispensed or administered, and comply with an approved plan of practice limited to a supervised structured environment in which your activities would be overseen and supervised by another physician.

Mailed 1-11-01

The Order was based upon your treatment of an undercover Board investigator posing as a patient and the Board's finding that you violated Sections 4731.22(B)(2), (B)(3) and (B)(6), Ohio Revised Code. A copy of the November 9, 1988, Entry of Order is attached hereto and incorporated herein.

- (3) On or about July 11, 1990, the State Medical Board of Ohio revoked your certificate to practice medicine and surgery in the State of Ohio based upon your being found guilty of twenty-eight (28) felony counts of trafficking in drugs in violation of Section 2925.03, Ohio Revised Code, one (1) felony count of Medicaid fraud in violation of Section 2913.40(B), Ohio Revised Code, and one (1) felony count of theft in violation of Section 2913.02(A)(3), Ohio Revised Code. The Board concluded that the above findings of guilt constituted violations of Sections 4731.22(B)(9), (B)(3), (B)(5), and (B)(8), Ohio Revised Code. Copies of the July 11, 1990, Board Order and the Franklin County Court of Common Pleas 1990 Entry reflecting your conviction and sentencing are attached hereto and incorporated herein.

The acts, conduct, and/or omissions underlying the Board Order in paragraph (2) above, individually and/or collectively, constitute "[f]ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, the acts, conduct, and/or omissions underlying the Board Order in paragraph (2) above, individually and/or collectively, constitute "[f]ailure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, the acts, conduct, and/or omissions underlying the Board Order in paragraph (2) above, individually and/or collectively, constitute "[s]elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, the acts, conduct, and/or omissions underlying the Board Order in paragraph (2) above, individually and/or collectively, constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, the acts, conduct, and/or omissions underlying the Board Order in paragraph (2) above, individually and/or collectively, constitute “[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, the acts, conduct, and/or omissions underlying the Board Order and the Franklin County Court of Common Pleas Entry in paragraph (3) above, individually and/or collectively, constitute “[a] plea of guilty to, or a judicial finding of guilt of, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2925.03, Ohio Revised Code, Trafficking in drugs, Section 2913.02(A)(3), Ohio Revised Code, Theft, and Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.

Further, the acts, conduct, and/or omissions underlying the Board Order and the Franklin County Court of Common Pleas Entry in paragraph (3) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section 2925.03, Ohio Revised Code, Trafficking in drugs, Section 2913.02(A)(3), Ohio Revised Code, Theft, and Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.

Further, the acts, conduct, and/or omissions underlying the Board Order and the Franklin County Court of Common Pleas Entry in paragraph (3) above, individually and/or collectively, constitute “a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2925.03, Ohio Revised Code, Trafficking in drugs.

Further, the acts, conduct, and/or omissions underlying the Board Order and the Franklin County Court of Common Pleas Entry in paragraph (3) above, individually and/or collectively, constitute “a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.03, Ohio Revised Code, Trafficking in drugs.

Further, the acts, conduct, and/or omissions underlying the Board Order and the Franklin County Court of Common Pleas Entry in paragraph (3) above, individually and/or collectively, constitute “publishing a false, fraudulent, deceptive, or misleading

statement,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.

Further, the acts, conduct, and/or omissions underlying the Board Order and the Franklin County Court of Common Pleas Entry in paragraph (3) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.

Further, the acts, conduct, and/or omissions underlying the Board Order and the Franklin County Court of Common Pleas Entry in paragraph (3) above, individually and/or collectively, constitute “[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice,” as that clause is used in Section 4731.22(B)(8), Ohio Revised Code, to wit: Section 2913.40(B), Ohio Revised Code, Medicaid Fraud.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice,

Leonard Krivitsky, M.D.

Page 5

the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anand G. Garg', written in a cursive style.

Anand G. Garg, M.D.
Secretary

AGG/krt

Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 3990
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
77 South High Street
17th Floor
Columbus, Ohio 43266-0315

(614)466-3934

July 13, 1990

Leonid Krivitskiy, M.D.
CCI
P. O. Box 5500
Chillicothe, Ohio 45601

Dear Doctor Krivitskiy:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on July 11, 1990, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett, M.D.
Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 055 325 307
RETURN RECEIPT REQUESTED

cc: David J. Graeff, Esq.

CERTIFIED MAIL NO. P 055 325 308
RETURN RECEIPT REQUESTED

Mailed 7/13/90

STATE OF OHIO
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on July 11, 1990, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Leonid Krivitskiy, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)

Henry G. Cramblett, M.D.
Henry G. Cramblett, M.D.
Secretary

July 13, 1990
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

LEONID KRIVITSKIY, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of July, 1990.

Upon the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the above date.

It is hereby ORDERED that:

The certificate of Leonid Krivitskiy, M.D., to practice medicine and surgery in the State of Ohio shall be and is hereby REVOKED.

This Order shall become effective immediately upon mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)

Henry G. Crumblett, M.D.
Henry G. Crumblett, M.D.
Secretary

July 13, 1990
Date

REPORT AND RECOMMENDATION
90 JUN 20 PM 1:39 IN THE MATTER OF LEONARD KRIVITSKY, M.D.

The Matter of Leonard Krivitsky, M.D., came on for hearing before me, Kevin P. Byers, Esq., Hearing Examiner for the State Medical Board of Ohio, on June 7, 1990.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter dated March 14, 1990 (State's Exhibit #5), the State Medical Board notified Leonard Krivitsky, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. On or about February 13, 1990, Dr. Krivitsky was convicted in the Franklin County Court of Common Pleas of twenty-eight (28) felony counts of trafficking in drugs in violation of Section 2925.03, Ohio Revised Code, as well as one (1) felony count of Medicaid fraud in violation of Section 2913.40(B), Ohio Revised Code, and one (1) count of theft in violation of Section 2913.02(A)(3), Ohio Revised Code. The Board alleged that these convictions constituted:
1. "A plea of guilty to, or a judicial finding of guilt of, a felony", as that clause is used in Section 4731.22(B)(9), Ohio Revised Code;
 2. "A plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code;
 3. "Publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4731.22(B)(5), Ohio Revised Code; and/or
 4. "The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice", as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.
- B. By letter received by the State Medical Board on April 6, 1990 (State's Exhibit #4), Dr. Krivitsky requested a hearing in this Matter.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Rachel L. Belenker, Assistant Attorney General
- B. Having been duly notified of the time and place of hearing, Dr. Krivitsky appeared neither in person nor by any authorized representative.

90 JUN 20 PM 1:39

III. Testimony Heard

None

IV. Exhibits Examined

In addition to State's Exhibits #4 and #5, previously identified, the following exhibits were identified by the State and admitted into evidence in this Matter.

- A. State's Exhibit #1: May 4, 1990, letter from the State Medical Board scheduling Dr. Krivitsky's formal hearing for June 7, 1990, at 10:00 A.M.
- B. State's Exhibit #2: April 6, 1990, letter to Dr. Krivitsky from the State Medical Board scheduling his formal hearing for April 20, 1990, but postponing it pursuant to Section 119.09, Ohio Revised Code.
- C. State's Exhibit #3: Letter received from David J. Graeff, Esq., on April 12, 1990, making his formal appearance on behalf of Dr. Krivitsky.
- D. State's Exhibit #6: Uncertified copy of the February 20, 1990, Conviction and Sentencing Entry with regard to Dr. Krivitsky's thirty (30) felony convictions in the Common Pleas Court of Franklin County, Ohio.
- E. State's Exhibit #6A: Certified copy of the Entry identified as State's Exhibit #6.
- F. State's Exhibit #7: November 9, 1988, Entry of Order and other documents of the State Medical Board of Ohio regarding a disciplinary action against Dr. Krivitsky's certificate to practice medicine and surgery.
- G. State's Exhibit #8: Certified copy of the thirty (30) count indictment rendered against Dr. Krivitsky by the Franklin County Grand Jury and filed on March 22, 1989.

V. Post Hearing Admissions to the Record

At hearing, the record was held open until 5:00 P.M. on the hearing day to allow the State to submit a certified copy of the document identified as State's Exhibit #6, as required by Rule 4731-13-24, Ohio Administrative Code. In addition to submitting that document, the State also submitted a motion for the post hearing admission of the document identified as State's Exhibit #8 which was inadvertently not submitted for admission at the hearing. The admission of State's Exhibit #8 is deemed reasonable and not unduly prejudicial to Dr. Krivitsky. Thus, the State's motion is hereby granted. The admission of State's Exhibit #6A was specifically allowed by the Hearing Examiner's ruling at hearing. The record in this Matter is deemed closed as of 5:00 P.M. on June 7, 1990.

90 JUN 20 PM 1:39

FINDINGS OF FACT

1. On March 22, 1989, a thirty-two (32) count indictment was filed in the Franklin County Court of Common Pleas naming defendants Leonard Krivitsky, M.D., and Lilia Deutsch. Dr. Krivitsky was named in thirty (30) of the thirty-two (32) counts. Dr. Krivitsky was charged with twenty-eight (28) counts of trafficking in drugs in violation of Section 2925.03, Ohio Revised Code; one (1) count of theft in violation of Section 2913.02(A)(3), Ohio Revised Code; and one (1) count of Medicaid fraud in violation of Section 2913.40(B), Ohio Revised Code. The charge of Medicaid fraud, count two of the indictment, specifies that Dr. Krivitsky "as a continuing course of criminal conduct, did knowingly make or cause to be made false or misleading statements or representations to the Ohio Department of Human Services, for use in obtaining reimbursement from the State of Ohio Medical Assistance Program ('Medicaid')."

This fact is established by State's Exhibit #8.

2. On December 22, 1989, Dr. Krivitsky was found guilty by jury of all thirty (30) felony counts in the indictment in which he was named as defendant. Dr. Krivitsky appeared for sentencing before the Common Pleas Court of Franklin County on February 13, 1990, and at that time received a total sentence of six and one-half (6 1/2) to fifteen (15) years of incarceration with two (2) years actual time. A substantial mandatory fine was also imposed.

These facts are established by State's Exhibit #6A.

3. Dr. Krivitsky was previously disciplined by the State Medical Board with regard to his prescribing practices.

This fact is established by State's Exhibit #7.

4. Dr. Krivitsky is presently incarcerated and did not personally attend his hearing. However, he did submit his contentions regarding the Board's allegations in the form of a letter.

This fact is established by State's Exhibit #4.

CONCLUSIONS

1. The finding of guilt on thirty (30) felony counts involving trafficking in drugs, theft and Medicaid fraud rendered against Dr. Krivitsky on December 22, 1989 in the Common Pleas Court of Franklin County, Ohio, constitutes "a plea of guilty to, or a judicial finding of guilt of, a felony", as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

- 50 JUN 20 1989
2. The finding of guilt on twenty-eight (28) felony counts of trafficking in drugs rendered against Dr. Krivitsky on December 22, 1989 in the Common Pleas Court of Franklin County, Ohio, constitutes "a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.
 3. The finding of guilt on one (1) felony count of Medicaid fraud rendered against Dr. Krivitsky on December 22, 1989 in the Common Pleas Court of Franklin County, Ohio, constitutes "publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
 4. The finding of guilt on one (1) felony count of Medicaid fraud rendered against Dr. Krivitsky on December 22, 1989 in the Common Pleas Court of Franklin County, Ohio; constitutes "obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice", as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

* * * *

There can be no reasonable dispute over Dr. Krivitsky's deviation from the standards of conduct which the State Medical Board must require of physicians licensed to practice medicine in the State of Ohio. Reliable, substantial, and probative evidence presented at the hearing in this Matter established that Dr. Krivitsky was convicted of committing felonious acts which also constitute violations of the statutes controlling the practice of medicine in this State. This Board has in the past considered a felony conviction, even for acts unrelated to a physician's practice, to merit stringent sanctions. Dr. Krivitsky's drug trafficking and Medicaid fraud would appear to be related to his practice. Furthermore, Dr. Krivitsky's prior discipline before the Board, evidence of which was admitted pursuant to Rule 4731-13-21(B), Ohio Administrative Code, may be considered to enhance any penalty levied by the Board. However, such enhancement need not be entertained since the nature of the violations found in the present Matter would, by themselves, certainly justify permanent revocation of Dr. Krivitsky's certificate.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Leonard Krivitsky, M.D., to practice medicine and surgery in the State of Ohio shall be and is hereby REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

KEVIN P. BYERS
Kevin P. Byers
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF JULY 11, 1990

REPORTS AND RECOMMENDATIONS

Ms. Belenker and all Enforcement Coordinators left the meeting at this time.

.....

Dr. Kaplansky asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of James R. Loeb, M.D.; Charles A. Petersen, M.D.; Sukumar Roy, M.D.; and Leonid Krivitskiy, M.D. A roll call was taken:

ROLL CALL:	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Ross	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye
	Dr. Kaplansky	- aye

.....

REPORT AND RECOMMENDATION IN THE MATTER OF LEONID KRIVITSKIY, M.D.

.....

DR. GRETTTER MOVED TO APPROVE AND CONFIRM MR. BYERS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF LEONID KRIVITSKIY, M.D. DR. O'DAY SECONDED THE MOTION.

.....

A roll call vote was taken:

ROLL CALL VOTE:	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Ross	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

March 14, 1990

Leonid Krivitskiy, M.D.
1585 South Roosevelt Avenue
Columbus, OH 43209

Dear Doctor Krivitskiy:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about February 13, 1990 you were convicted in the Franklin County Court of Common Pleas of twenty-eight (28) counts of Trafficking in Drugs pursuant to Section 2925.03, Ohio Revised Code, one (1) felony count of Medicaid Fraud pursuant to Section 2913.40(B), Ohio Revised Code, and one (1) count of Theft pursuant to Section 2913.02(A)(3), Ohio Revised Code.

Your conviction in the Franklin County Court of Common Pleas of a total of thirty (30) felony counts of Trafficking in Drugs, Theft, and Medicaid Fraud respectively, as alleged in the above paragraph (1), individually and/or collectively, constitutes "a plea of guilty to, or a judicial finding of guilt of, a felony", as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Your conviction in the Franklin County Court of Common Pleas for the twenty-eight (28) felony counts of Trafficking in Drugs, individually and/or collectively, constitutes "a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

March 14, 1990

The acts, conduct, and/or omissions resulting in your conviction in the Franklin County Court of Common Pleas for the one (1) count of Medicaid Fraud, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, the acts, conduct, and/or omissions resulting in your conviction in the Franklin County Court of Common Pleas for the one (1) count of Medicaid Fraud, individually and/or collectively, constitutes the "obtaining of, or attempting to obtain money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 746 510 155
RETURN RECEIPT REQUESTED

cc: Lewis Dye, Esq.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Leonid Krivitskiy
Appellant

v.

State Medical Board of Ohio
Appellee

Case No. 88CV-12-8262

Judge Close

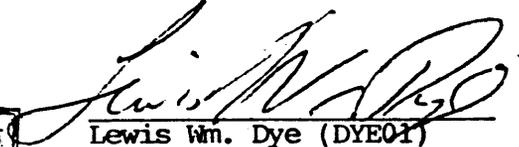
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FRANKLIN COUNTY, OHIO
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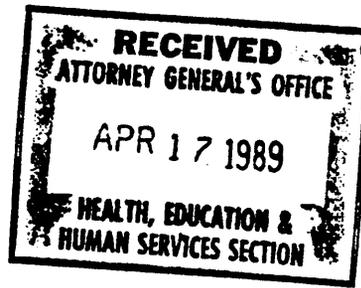
NOTICE OF DISMISSAL

Now comes the Appellant through his attorney Lewis Wm. Dye and hereby dismisses his Appeal herein.

Respectfully submitted,



Lewis Wm. Dye (DYE01)
Attorney for Appellant
555 South Third Street
Columbus, Ohio 43215
(614) 224-7298

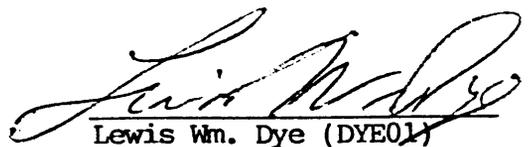


Approved:


Leonid Krivitskiy

CERTIFICATE OF SERVICE

A copy of the foregoing document was sent by ordinary mail to John C. Dowling, Attorney for Appellee, 1680 State Office Tower, 30 East Broad Street, Columbus, Ohio 43266-0410 on this 14th day of ~~March~~ ^{April}, 1989.



Lewis Wm. Dye (DYE01)
Attorney for Appellant

12/14/88
- EMG

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Leonid Krivitskiy, M.D.
2691 East Main Street
Columbus, Ohio 43215

Appellant

v.

State Medical Board
State of Ohio
77 South High Street
Columbus, Ohio 43215

Appellee

88CV - 12 - 8202

DEC - 9 1988

Case no. _____

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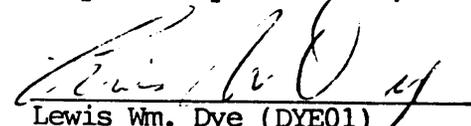
NOTICE OF APPEAL OF STATE MEDICAL BOARD DECISION

On November 22, 1988, the State Medical Board of Ohio, mailed its decision revoking Appellant Leonid Krivitskiy's certificate to practice medicine and surgery in the State of Ohio. Said Board then stayed that revocation and Dr. Krivitskiy's certificate was indefinitely suspended for at least six (6) months. Further, reinstatement of Dr. Krivitskiy's suspended certificate would require numerous conditions be satisfied.

In accordance with Section 119.12 O.R.C., Appellant Dr. Leonid Krivitskiy files this appeal, and gives notice to the State of Ohio, State Medical Board of Ohio of said appeal.

Further, Appellant states as grounds for this appeal that the findings and decision of the State Medical Board of Ohio are contrary to the weight of evidence presented. At all times material Appellant acted in accordance with the law, customs, practices, and ethics of his profession as set forth in Section 4731.22 O.R.C. and elsewhere.

Respectfully submitted,



Lewis Wm. Dye (DYE01)
Attorney for Appellant
555 South Third Street
Columbus, Ohio 43215
(614) 224-7298

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Leonid Krivitskiy, M.D.

Appellant

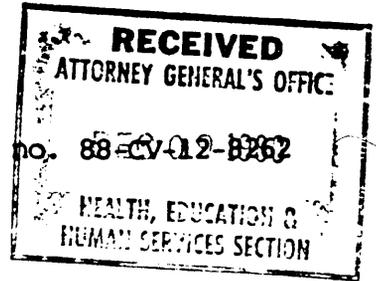
v.

State Medical Board of Ohio
State of Ohio

Appellee

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Case no. 88-cv-12-8262



AGREED ENTRY

Upon written notice of Appellant, agreement of Appellee and for good cause shown, the State Medical Board's Order suspending Appellant's certificate to practice medicine and surgery in the State of Ohio is hereby Ordered stayed during the pending of this appeal, conditioned upon:

- (1) Supervision by Dr. Deutsch,
- (2) No schedule II or III drugs be prescribed or dispensed by the Appellant,
- (3) Appellant is to maintain a log of all prescribed substances and it be available at all times for inspection. ✓

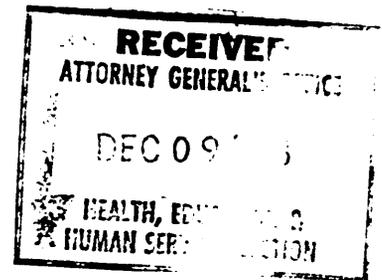
APPROVED:

Lewis Wm. Dye (DYE01)
Counsel for Appellant
555 South Third Street
Columbus, Ohio 43215
(614) 224-7298

Judge

88-090-7-001-1-52
DEC 9 1988

Christopher Constantini
Assistant Attorney General
Counsel for State Medical Board
by LWD



STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS, OHIO 43215

November 22 , 1988

Leonid Krivitskiy, M.D.
2691 East Main Street
Columbus, Ohio 43209

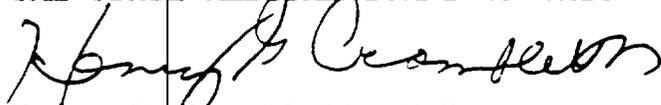
Dear Doctor Krivitskiy:

Please find enclosed copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on November 9, 1988, including Motions approving the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em
Enclosures

CERTIFIED MAIL NO. P 746 510 463
RETURN RECEIPT REQUESTED

cc: Lewis W. Dye, Esq.

CERTIFIED MAIL NO. P 746 510 464
RETURN RECEIPT REQUESTED

Mailed 12/1/88

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

LEONID KRIVITSKIY, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 9th day of November, 1988.

Upon the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which is attached hereto and incorporated herein, and upon modification, approval and confirmation by vote of the Board on November 9, 1988, the following Order is hereby entered on the Journal of the State Medical Board for the 9th day of November, 1988.

It is hereby ORDERED:

1. That the certificate of Leonid Krivitskiy, M.D., to practice medicine and surgery in the State of Ohio be REVOKED. Such revocation is stayed, and Dr. Krivitskiy's certificate is hereby INDEFINITELY SUSPENDED for at least six (6) months.
2. The State Medical Board shall not consider reinstatement of Dr. Krivitskiy's certificate unless and until the following requirements are met:
 - a. Dr. Krivitskiy shall submit a properly completed application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Krivitskiy shall provide documentation of successful completion of a pharmacology course approved in advance by the Board.
 - c. Dr. Krivitskiy shall take and achieve a passing score on the Test Of Spoken English.
3. Upon reinstatement, Dr. Krivitskiy's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Krivitskiy shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

Leonid Krivitskiy, M.D.

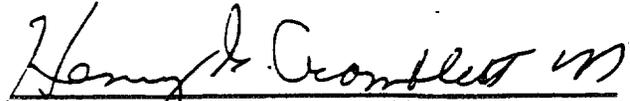
- b. Dr. Krivitskiy shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of probation.
 - c. Dr. Krivitskiy shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.
 - d. Dr. Krivitskiy shall keep a log of all controlled substances prescribed, dispensed or administered in the format specified by the Board, and shall submit such log at each appearance before the Board or its representative, and at such other times as the Board requests.
 - e. In the event that Dr. Krivitskiy should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Krivitskiy must notify the State Medical Board in writing of the dates of departure or return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
 - f. Dr. Krivitskiy shall not engage in the solo practice of medicine. Prior to his resumption of practice, Dr. Krivitskiy shall submit to the Board, and receive its prior approval for, a plan of practice limited to a supervised structured environment in which Dr. Krivitskiy's activities will be overseen and supervised by another physician. Dr. Krivitskiy shall not resume the practice of medicine until he has received prior written approval of his practice arrangement from the Board.
4. If Dr. Krivitskiy violates the terms of this Order in any respect, the Board, after giving Dr. Krivitskiy notice and the opportunity to be heard, may set aside the stay Order and impose the revocation of his certificate.
 5. Upon successful completion of probation, Dr. Krivitskiy's certificate will be fully restored.

Page 3

Leonid Krivitskiy, M.D.

This Order shall become effective 30 days following the mailing of notification of approval by the State Medical Board. Prior to the effective date of this Order, Dr. Krivitskiy shall not undertake treatment of any patients other than those previously under his care, and shall maintain a log of all controlled substances prescribed, administered or dispensed.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

November 22, 1988
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF
LEONID KRIVITSKIY, M.D.,
A.K.A. LEONARD KRIVITSKY, M.D.

OCT 14 1988

The Matter of Leonid Krivitskiy, M.D., originally came on for hearing before Lucille O. Oxley, M.D., then Member of the State Medical Board of Ohio, on March 12, March 13, and April 9, 1986. No Report and Recommendation having been issued by Dr. Oxley prior to her retirement from the Board, this Matter was reassigned to me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio pursuant to Chapters 119. and 4731., Ohio Revised Code. Having thoroughly reviewed the transcripts of testimony and the exhibits presented before Dr. Oxley, this Hearing Examiner scheduled a status conference for March 16, 1988. Subsequently, this Matter was scheduled for an additional day of hearing on ~~March~~ ^{March} 13, 1988, for the purposes set forth in a March 17, 1988, Entry, identified and admitted herein as Board Exhibit A.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of December 4, 1985 (State's Exhibit #1), the State Medical Board notified Leonid Krivitskiy, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's proposed action was based upon factual allegations with regard to Dr. Krivitskiy's treatment of a Medical Board Investigator, posing as a patient named Chuck E. Cook. Dr. Krivitskiy's acts with regard to his treatment of Mr. Cook were alleged to constitute:
1. "Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease", as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code;
 2. "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; and
 3. "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

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Dr. Krivitskiy was advised of his right to request a hearing in this Matter.

- B. By letter received by the State Medical Board on December 24, 1985 (State's Exhibit #2), Lewis Wm. Dye, Esq., requested a hearing on behalf of Dr. Krivitskiy.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Mary Joseph Maxwell, Assistant Attorney General (with regard to matters heard before Dr. Oxley) and by Christopher J. Costantini, Assistant Attorney General (with regard to matters presented before this Hearing Examiner)
- B. On behalf of the Respondent: Lewis W. Dye, Esq.

III. Testimony Heard

- A. Presented by the State
1. Charles A. Eley, Investigator, State Medical Board
 2. Paul Poldergotch, Diversion Investigator, U.S. Drug Enforcement Administration
 3. Leonid Krivitskiy, M.D., as on cross-examination
- B. Presented by the Respondent
1. Carol Miller, Columbus Police Department, Narcotics Bureau
 2. Samuel Deutsch, M.D.
 3. Lilly Deutsch, Dr. Krivitskiy's office assistant
 4. Leonid Krivitskiy, M.D.
 5. Marijan Grogova, Mansfield Police Department

C. Other

John Braud, Assistant U.S. Attorney, appeared at the May 13, 1988, hearing on behalf of the Drug Enforcement Administration to state its position with regard to a subpoena issued at the Respondent's request to the Cleveland office of the DEA for the original tape recordings of the undercover visits of Mr. Eley.

IV. Exhibits Examined

In addition to those listed above, the following exhibits were identified and admitted into evidence in this Matter:

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A. Presented by the State

1. State's Exhibit #3: December 30, 1985, letter to Lewis Wm. Dye, Esq., from the State Medical Board advising that a hearing initially set for January 6, 1986, was postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit #4: February 4, 1986, letter to Lewis W. Dye, Esq., from the State Medical Board scheduling the hearing for March 12, 1986.
3. State's Exhibit #5: DEA evidence form; two prescriptions written by Dr. Krivitskiy for Charles Cook and dated November 27, 1984, one for 7 Dalmane 30 mg., the other for 21 Librium 10 mg.
4. State's Exhibit #6: Copy of what appears to be a notation of future appointments with Dr. Krivitskiy for December 13 and January 8, and copy of a weight control plan, both identified by Mr. Eley at hearing as having been received from Dr. Krivitskiy's office on December 6, 1984.
5. State's Exhibit #7: Copies of the following documents, all identified by Mr. Eley at hearing as having been received from Dr. Krivitskiy's office on December 13, 1984: two prescriptions for Charles Cook dated December 13, 1984, one for 7 Dalmane 30 mg., the other for 21 Librium 10 mg.; two prescriptions for Charles Cook dated December 20, 1984, one for 7 Dalmane 30 mg., the other for 21 Librium 10 mg.; two prescriptions for Charles Cook dated December 27, 1984, one for 7 Dalmane 30 mg., the other for 21 Librium 10 mg.; and an appointment reminder for December 28.
6. State's Exhibit #8: Two prescriptions, both dated September 25, 1985, written by Dr. Krivitskiy for Charles Cook, one for 90 Librium 10 mg., the other for 30 Adipex-P 37.5 mg.
7. State's Exhibit #9: Copies of the following documents, all identified by Mr. Eley at hearing as having been received from Dr. Krivitskiy's office on October 25, 1985: three prescriptions for Charles Cook dated October 25, 1985, one for 90 Librium 10 mg., one for 90 Soma 350, and one for 30 Adipex-P 37.5 mg.; two prescriptions for Charles Cook dated November 25, 1985, one for 90 Librium 10 mg., the other for 90 Soma 350; and a receipt dated October 25 for a \$35 payment.
8. State's Exhibit #10: December 2, 1985, Statement of Charles A. Eley and an attachment consisting of a patient history form for Charles E. Cook dated 11/27/84 (this exhibit was submitted without the other attachments referred to in Mr. Eley's statement).

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9. State's Exhibit #11: April 12, 1988, request from Lewis Wm. Dye, Esq., to the State Medical Board for issuance of a subpoena duces tecum to the Drug Enforcement Administration, Cleveland, for the "original tapes used in the combined DEA State Medical Board investigation" of Dr. Krivitskiy; and copy of the April 20, 1988, subpoena duces tecum issued by the State Medical Board in response to that request.

B. Presented by the Respondent

1. Respondent's Exhibit A: Note cards prepared by Mr. Eley with regard to his 1984 visits to Dr. Krivitskiy's office on November 27, December 6, and December 13, and his 1985 visits on September 25 and October 25.
2. Respondent's Exhibit B: Copy of Dr. Krivitskiy's patient record for Charles E. Cook.
3. Respondent's Exhibit D: Hand-out entitled "Fighting Heart Disease" (SK&F Co. 1983), with notations added by Dr. Krivitskiy.
4. Respondent's Exhibit E: June, 1982 letters of recommendation with regard to Dr. Krivitskiy from: William H. Bunn, M.D., Youngstown Hospital Association; George J. David, M.D., St. Thomas Hospital Medical Center; and J. Harlan Dix, M.D., St. Thomas Hospital Medical Center.
5. Respondent's Exhibit F: Excerpt (pg. 36) from "Comprehensive Therapy" (July 1985) regarding benzodiazepines, with underlining added by Dr. Krivitskiy.
6. Respondent's Exhibit G: Pamphlet entitled "Weight Control Plan."

- C. Board Exhibit A, a March 17, 1988, Entry of this Hearing Examiner, was admitted upon the Hearing Examiner's own motion.

V. Post-Hearing Admission to the Record

At the March 13, 1986, hearing in this Matter, Dr. Krivitskiy made reference to the 1984 Physicians' Desk Reference (PDR) with regard to the medications he prescribed for Mr. Cook. For the Board's information and convenience, copies of excerpts from this PDR with regard to Adipex-P, Dalmane, Librium, and Soma are hereby admitted to the record as Board Exhibit B upon the Hearing Examiner's own motion.

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VI. Close of Record

At the time of the May 13, 1988, hearing, arrangements were made with the Cleveland office of the DEA and an independent court-reporting firm for the transcription of three original tape recordings, copies of which had been transcribed during the April 9, 1986, hearing. New transcriptions made from the original tapes were received at the offices of the State Medical Board on June 9, 1988, and are hereby admitted to the record in this Matter. The record in this Matter is deemed closed as of June 9, 1988.

FINDINGS OF FACT

1. On at least five separate occasions, Charles A. Eley, an investigator for the State Medical Board of Ohio, visited the office of Leonid Krivitskiy, M.D., each time posing as a patient and using the assumed name of Charles (Chuck) E. Cook. Such visits were made on November 27, 1984; December 6, 1984; December 13, 1984; September 25, 1985; and October 25, 1985. Dr. Krivitskiy was unaware of Mr. Cook's true identity at the time of those visits.

These facts are established by the testimony of Mr. Eley (3/12/86 Tr. at 13-79), the testimony of Dr. Krivitskiy (3/13/86 Tr. at 40-41), and Respondent's Exhibit B.

2. On his November 27, 1984, visit, Mr. Cook (a.k.a. Mr. Eley) represented to Dr. Krivitskiy that he was from out of town and on welfare, and that he was staying with his mother in Columbus while he looked for work because he had been laid off from his job. He presented to Dr. Krivitskiy a prescription for an unidentified medication (from Dr. Krivitskiy's comments, apparently of a type used to treat arthritis), which prescription he claimed to have been unable to fill because it was an "out-of-town prescription." Mr. Cook informed Dr. Krivitskiy that his out of town physician gave him the unidentified medication and Librium. He indicated that he didn't know what that medication was for, and that he just wanted something to make him "feel good." Dr. Krivitskiy replied that he did not prescribe drugs to "feel good," as that was against the law. Mr. Cook then asked Dr. Krivitskiy if he could give him "something to make me go to sleep." Without further inquiry as to the cause, nature, or extent of any sleep problems Mr. Cook might have, Dr. Krivitskiy replied, "Yes. I can give you Dalmane." Dr. Krivitskiy thereafter took a check-list history of Mr. Cook's past ailments and current habits, took his blood pressure, and examined him stethoscopically. In response to Mr. Cook's subsequent comments regarding his prior use of medications to go sleep and to wake up, Dr. Krivitskiy advised Mr. Cook that it was "absolutely against the law" to give him stimulants to keep him awake, adding that he gave such medications only for weight reduction. Mr. Cook responded, "I have some of that, too." Dr. Krivitskiy then advised Mr. Cook that he did not accept welfare customers for weight reduction.

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Upon Mr. Cook's inquiry, he stated that it would cost \$25. When Mr. Cook indicated that he could get the money next week, Dr. Krivitskiy instructed him to make an appointment and to specify to the receptionist that he wanted to come in for weight. Dr. Krivitskiy then stated that "for right now," he would give Mr. Cook Librium 10 mg., "like you are taking," and Dalmane 30 mg., "for sleep." Dr. Krivitskiy then proceeded to write for Mr. Cook prescriptions for 21 Librium 10 mg. (a Schedule IV controlled substance) and 7 Dalmane 30 mg. (a Schedule IV controlled substance).

Dr. Krivitskiy's patient record for this visit reflects no physical examination other than pulse, respiration, blood pressure, and reflexes. Although Mr. Cook had stated no medical complaints, the patient record indicates "no sleep" as present ailment; "nervousness, insomnia" as diagnosis; and the Librium and Dalmane prescriptions as treatment. No further information indicating the basis for the diagnoses is recorded.

These facts are established by the 6/9/88 transcription of the tape recording of this visit, the testimony of Mr. Eley (3/12/86 Tr. at 17-21), the testimony of Dr. Krivitskiy (3/13/86 Tr. at 41), State's Exhibit #5, and Respondent's Exhibit B.

3. On December 6, 1984, Mr. Cook (a.k.a. Mr. Eley) returned to Dr. Krivitskiy's office. At that time Dr. Krivitskiy, recording in his patient record for Mr. Cook no physical examination other than a weight of 214 lbs., prescribed for Mr. Cook 30 Adipex-P 37.5 mg. (a Schedule IV controlled substance), 21 Librium 10 mg., and 7 Dalmane 30 mg. Dr. Krivitskiy also provided Mr. Cook with a pre-printed weight control plan (see State's Exhibit #6 and Respondent's Exhibit G) and advised him that he would receive no more medications for weight unless he lost weight. Dr. Krivitskiy admitted at hearing that Mr. Cook had been fully dressed and wearing a hat and coat when he had weighed him. Mr. Eley testified that he had paid \$25 for the weight medication and had given a welfare "coupon" as payment for the Librium and Dalmane.

These facts are established by the testimony of Mr. Eley (3/12/86 Tr. at 22-26), the testimony of Dr. Krivitskiy (3/13/86 Tr. at 44), State's Exhibit #6, and Respondent's Exhibit B.

4. When Mr. Cook (a.k.a. Mr. Eley) returned to Dr. Krivitskiy's office on December 13, 1984, he requested the same medications he had received on his last visit. Dr. Krivitskiy refused to give him more weight medication because the "month was not up" but, apparently without performing any physical examination (the patient record notes only "c/o same"), he issued for Mr. Cook prescriptions for 7 Dalmane 30 mg. and 21 Librium 10 mg. Mr. Cook then advised Dr. Krivitskiy that he wanted a month's, rather than a week's, supply. According to the testimony of Mr. Eley, Dr. Krivitskiy then proceeded to write for and issue to Mr. Cook four additional prescriptions, two dated December 20, 1984, for 7 Dalmane 30 mg. and 21 Librium 10 mg., and two dated December 27, 1984, for 7 Dalmane 30 mg. and 21 Librium 10 mg.

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It is noted that Dr. Krivitskiy's patient record for Mr. Cook reflects an office visit on December 20, 1984, but not on December 27, 1984. Dr. Krivitskiy admitted at hearing that he had issued post-dated prescriptions at this patient's request.

These facts are established by the testimony of Mr. Eley (3/12/86 Tr. at 26-30), the testimony of Dr. Krivitskiy (3/13/86 Tr. at 41, 53), State's Exhibit #7, and Respondent's Exhibit B.

5. Mr. Cook (a.k.a. Mr. Eley) next returned to Dr. Krivitskiy's office as a patient on September 25, 1985. Mr. Cook stated no medical complaint. Dr. Krivitskiy did not inquire as to Mr. Cook's reason for this office visit, but advised him that he would be seeing him once a month and that, although he could not prescribe Librium and Dalmane together, he could prescribe enough Adipex and Librium for the whole month. Dr. Krivitskiy proceeded to weigh Mr. Cook, recording in the patient record for this visit a weight of 223 lbs. Performing no further physical examination, Dr. Krivitskiy then wrote for Mr. Cook prescriptions for 30 Adipex-P 37.5 mg. and 90 Librium 10 mg. A return appointment was scheduled for October 25.

These facts are established by the 6/9/88 transcription of the tape recording of this visit, the testimony of Mr. Eley (3/12/86 Tr. at 30-35), the testimony of Paul Poldergotch (3/13/86 Tr. at 7-12), the testimony of Dr. Krivitskiy (3/13/86 Tr. at 42), State's Exhibit #8, and Respondent's Exhibit B.

6. When Mr. Cook (a.k.a. Mr. Eley) returned to Dr. Krivitskiy's office on October 25, 1985, Dr. Krivitskiy asked him if he was there for weight. Mr. Cook responded that he was, and wanted something for sleep, too. Dr. Krivitskiy stated that he couldn't give sleep medications with Librium. After weighing Mr. Cook at 222 lbs., Dr. Krivitskiy refused to give him more weight medication. Mr. Cook replied that he had just taken it to keep him awake, anyway. Dr. Krivitskiy then stated that he couldn't give him weight medication if he was not using it for weight. After further discussion, during which Dr. Krivitskiy refused Mr. Cook's specific request for Dalmane because of the Librium, Dr. Krivitskiy volunteered that Adipex was used for either weight or depression. He asked Mr. Cook if he was depressed, and Mr. Cook said that he was not. After a further brief discussion (with regard to Mr. Cook's "daughter Mary Jan"), Dr. Krivitskiy repeated that he couldn't prescribe Adipex to keep people awake, but indicated that he could give Mr. Cook Librium and Soma without any conflict. Although Mr. Cook had stated no complaint other than his desire for weight and sleep medications, Dr. Krivitskiy stated that he would give him one tablet three times a day of the Soma, "just to relax your muscles." Without performing any further physical examination, Dr. Krivitskiy proceeded to write for Mr. Cook prescriptions dated October 25, 1985, for 90 Librium 10 mg. and 90 Soma 350 (a noncontrolled prescription drug). Upon Mr. Cook's request for post-dated "scripts" for the next month, Dr. Krivitskiy also wrote for and issued to Mr. Cook on October 25 prescriptions dated November 25, 1985, for 90 Librium 10 mg. and 90 Soma 350. Dr. Krivitskiy refused Mr. Cook's further request for a "script for Librium for Mary Jan," stating that he couldn't give any controlled substance without seeing the person. Mr. Cook then paid \$35

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Approximately five minutes later that same day, after having conferred with DEA agent Paul Poldergotch, Mr. Cook (a.k.a. Mr. Eley) returned to Dr. Krivitskiy's office and asked Dr. Krivitskiy if he could get the "same thing" if he was depressed. Dr. Krivitskiy replied that he had asked Mr. Cook several times if he was depressed, and that Mr. Cook could not now change his story. He further stated that he had given him Librium for depression. However, Dr. Krivitskiy then asked, "Why do you feel the depression?" Mr. Cook replied that he was depressed because Dr. Krivitskiy wouldn't give him any weight medication. Although Dr. Krivitskiy rejected that as being an invalid reason for depression, he responded to Mr. Cook's subsequent promises that he would start losing weight by writing for him a prescription dated October 25, 1985, for 30 Adipex 37.5 mg., authorizing one refill.

These facts are established by the 6/9/88 transcription of the tape recordings of the 10/25/85 visits, the testimony of Mr. Eley (3/12/86 Tr. at 35-45), the testimony of Mr. Poldergotch (3/13/86 Tr. at 12-17), the testimony of Dr. Krivitskiy (3/13/86 Tr. at 42), State's Exhibit #9 and Respondent's Exhibit B.

7. Although Mr. Cook had weighed only 214 lbs. (fully dressed and wearing a hat and coat) on December 6, 1984, when Dr. Krivitskiy first prescribed for him Adipex-P, Dr. Krivitskiy contended at hearing that his prescribing of Adipex-P for Mr. Cook had been appropriate because, by Dr. Krivitskiy's calculations as set forth in his notations on Respondent's Exhibit D, Mr. Cook had been more than 20% overweight at a weight of 222 lbs. Although Mr. Cook would have been less than 20% overweight at a weight of 214 lbs. (by the same criteria used in Dr. Krivitskiy's calculations), Dr. Krivitskiy further contended that he knew from the first visit that Mr. Cook was overweight because of his "general appearance." According to Dr. Krivitskiy, his decision to prescribe weight medications had also been based upon Mr. Cook's willingness to conform to a diet and exercise program and to lose five to ten pounds per month; as Dr. Krivitskiy would ordinarily require before giving any additional weight medication. Dr. Krivitskiy acknowledged that there had been no significant weight loss between the September and October, 1985, Adipex-P prescriptions, but stated, "We are talking about one time." (3/13/86 Tr. at 50). Dr. Krivitskiy further testified that he had acceded to Mr. Cook's October 25 request for Adipex because he was convinced that Mr. Cook had "suddenly realized" how much he needed to lose the weight (5/13/88 Tr. at 42-43). Dr. Krivitskiy stated that, in his medical judgment, Mr. Cook had needed to lose weight, so all Dr. Krivitskiy had needed to justify the weight medication was Mr. Cook's commitment that he would make the effort to lose weight.

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According to the 1984 Physicians' Desk Reference (PDR), which Dr. Krivitskiy referenced during his 1986 testimony, the Schedule IV controlled substance Adipex-P, generically known as phentermine hydrochloride, is a stimulant anorectic with pharmacologic activity similar to the amphetamines. Its actions include elevation of blood pressure, as well as central nervous system stimulation. Adipex-P is indicated in the management of exogenous obesity as a short term (a few weeks) adjunct in a regimen of weight reduction based on caloric restriction. However, the PDR cautions that the limited usefulness of agents of this class should be measured against possible risk factors inherent in their use, and warns that the possibility of abuse should be kept in mind when evaluating the desirability of utilizing Adipex-P.

These facts are established by the testimony of Dr. Krivitskiy (3/13/86 Tr. at 43-50, 56-58 and 5/13/88 Tr. at 42-44), Respondent's Exhibit D, and Board Exhibit B.

8. Dr. Krivitskiy testified that he had prescribed Librium for Mr. Cook because "he was an individual with a lot of problems, both personal and societal problems." (3/13/86 Tr. at 51). Although Dr. Krivitskiy stated that these problems had included his being out of work, transportation difficulties, and problems with his daughter, Mr. Cook had not mentioned his daughter to Dr. Krivitskiy prior to Dr. Krivitskiy's prescribing of Librium for him on November 27, 1984. Further, the tape recording of this visit does not support Dr. Krivitskiy's claim that Mr. Cook had stated that the Librium he received from his out-of-town physician was effective for nervousness (3/13/86 Tr. at 51).

According to the PDR (1984), the Schedule IV controlled substance Librium, generically known as chlordiazepoxide hydrochloride, is an anxiolytic with anti-anxiety, sedative, appetite-stimulating, and weak analgesic actions. Although Librium is indicated for the management of anxiety disorders or for the short-term relief of symptoms of anxiety, the PDR states, "Anxiety or tension associated with the stress of everyday life usually does not require treatment with an anxiolytic." It further states that the effectiveness of Librium in long term use (more than four months) has not been established and that the physician should periodically reassess the usefulness of this drug for the individual patient. The PDR warns that the concomitant use of other central nervous system depressants with Librium may have an additive effect, and that caution must be exercised in administering Librium to individuals known to be addiction-prone or whose histories suggest they may increase the dosage on their own initiative.

These facts are established by the testimony of Dr. Krivitskiy (3/13/86 Tr. at 50-53 and 5/13/88 Tr. at 45), the 6/9/88 transcription of the 11/27/84 visit, and Board Exhibit B.

9. Dr. Krivitskiy stated at hearing that he had prescribed Dalmane for Mr. Cook's "insomnia." Although Dr. Krivitskiy claimed that Mr. Cook had complained several times that he had problems sleeping, in fact, on November 27, 1984, Dr. Krivitskiy prescribed Dalmane solely upon Mr. Cook's request for "something to make me go to sleep," without asking any questions to determine the nature or extent of any sleep problems Mr. Cook might have.

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According to the PDR (1984), the Schedule IV controlled substance Dalmane, generically known as flurazepan hydrochloride, is a hypnotic agent indicated for the treatment of insomnia characterized by difficulty in falling asleep, frequent nocturnal awakenings, and/or early morning awakening. Dalmane can be used effectively in patients with recurring insomnia or poor sleeping habits, and in acute or chronic medical situations requiring restful sleep. Although Dalmane has been established to be effective for at least 28 consecutive nights of drug administration, the PDR states that prolonged use of hypnotics is not usually indicated and should be undertaken only in conjunction with appropriate evaluation of the patient. The PDR warns of possible additive effects of Dalmane with other central nervous system depressants, the potential for such interaction continuing for several days following discontinuance of the Dalmane. It also warns that caution must be exercised in administering Dalmane to individuals known to be addiction-prone or those whose histories suggest they may increase dosage on their own initiative.

These facts are established by the testimony of Dr. Krivitskiy (3/13/86 Tr. at 51, 53-54 and 5/13/88 Tr. at 41-42), the 6/9/88 transcriptions of the tape recordings of Mr. Cook's undercover visits, and Board Exhibit B.

10. Dr. Krivitskiy testified that he had prescribed Soma, a muscle relaxant, for Mr. Cook on October 25, 1985, because he had appeared "very tense, and very rigid." (3/13/86 Tr. at 54). Although Dr. Krivitskiy also claimed that Mr. Cook had asked him if he could prescribe something to relax him, the tape recording of the October 25 visit shows only that, prior to Dr. Krivitskiy's offer of Soma, Mr. Cook had attempted to persuade him to provide Dalmane for sleep in addition to Librium.

According to the PDR (1984), the noncontrolled prescription drug Soma, generically known as carisoprodol, produces muscle relaxation by blocking interneuronal activity in the descending reticular formation and spinal cord. Although it does not directly relax tense skeletal muscles in man, Soma is indicated as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculoskeletal conditions. The PDR warns that the effects of Soma and other central nervous system depressants may be additive. Although psychological dependence and abuse of Soma in clinical use have been rare, the PDR warns that caution should be used in providing Soma to addiction-prone individuals.

These facts are established by the testimony of Dr. Krivitskiy (3/13/86 Tr. at 54-56), the 6/9/88 transcription of the first 10/25/85 office visit, and Board Exhibit B.

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11. Samuel Deutsch, M.D., a Board certified physician, testified on behalf of Dr. Krivitskiy at the May 13, 1986, hearing. It was Dr. Deutsch's stated opinion that the physician who prescribed a diet, exercise, and Adipex after weighing the patient, visually examining the patient's appearance, and taking the patient's blood pressure, would be in conformance with minimal standards of care for practitioners managing obese patients. Significantly, however, Dr. Deutsch's own physical examinations with regard to such patients would further include checking the carotid, pulse, and heart, ordering an EKG where indicated; checking the neck for goiter; examining the abdomen and reflexes; and performing a brief neurological exam (see Tr. at 71, 81).

In Dr. Deutsch's opinion, Librium is an appropriate drug for the treatment of anxiety. Dr. Deutsch testified that a patient's stating of personal problems, exhibiting overweight, and complaining of sleeplessness might suggest a diagnosis of anxiety, but that other objective findings by the physician might include the patient's facial expressions, perspiration, breathing rate, fidgeting, bitten nails, etc. (Tr. at 85). Dr. Deutsch stated that he would not prescribe Librium for a patient who stated that he was on welfare, out of work, living with his mother, and wanted something to feel good, and would probably tell that patient to leave his office (Tr. at 82). Dr. Deutsch also testified that, if he prescribed an anxiolytic drug such as Librium for a patient, he would begin with the lowest dosage and would determine from talking to and examining the patient on follow-up visits whether to stop the drug, increase the drug, or change it to an antidepressant (Tr. at 73-74).

In Dr. Deutsch's opinion, Dalmane 30 mg., by itself, would be appropriate to assist a 40-year-old patient with sleeping (Tr. at 74-75, 79). However, when asked if he would interpret a patient's statement that he "needed something to make him sleep" as meaning the patient was having sleeping difficulties, especially if that patient had many depressing social circumstances, Dr. Deutsch responded, "Half the world has problems sleeping. You have got to determine whether it is anxiety or depression." (Tr. at 74).

These facts are established by the testimony of Dr. Deutsch (3/13/86 Tr. at 70-86).

12. At some point during the Medical Board's investigation of Dr. Krivitskiy (probably in 1984), one Marijan Grogoza, a Mansfield Police Officer, went to Dr. Krivitskiy's office, posing as Mary Jan Cook, daughter of Chuck Cook. The purpose of her visit was to attempt to get drugs from Dr. Krivitskiy. Although Ms. Cook (a.k.a. Ms. Grogoza) told Dr. Krivitskiy that she wanted to lose some weight, Dr. Krivitskiy refused to prescribe diet medications for her. At some point during the visit, Dr. Krivitskiy became irate. Although Ms. Grogoza was unsure of the reason for Dr. Krivitskiy's anger, she left his office without any medications or prescriptions for medications.

These facts are established by the testimony of Sgt. Grogoza (5/13/88 Tr. at 17-35).

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CONCLUSIONS

The acts, conduct, and/or omissions of Leonid Krivitskiy, M.D., as set forth in the above Findings of Fact, constitute:

1. "Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease", as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code;
2. "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; and
3. "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Dr. Krivitskiy's course of conduct with regard to his "treatment" of Mr. Cook not only falls below minimal standards of care of similar physicians, but also demonstrates failure to use reasonable care discrimination in the administration of drugs, failure to employ acceptable scientific methods in the selection of drugs for treatment of disease, and failure to establish legal and legitimate therapeutic purposes for his prescribing. Despite his claims to the contrary, Dr. Krivitskiy failed to establish any legitimate therapeutic purpose for either the controlled substances (Librium, Dalmane, and/or Adipex-P) or the noncontrolled substance (Soma) that he prescribed for Mr. Cook. It is apparent from the tape-recorded conversations between Dr. Krivitskiy and Mr. Cook, as well as the testimony of Mr. Eley, that Dr. Krivitskiy made no significant effort to medically evaluate this "patient", but rather sought ways to accommodate Mr. Cook's quest for drugs for nontherapeutic use, while maintaining an appearance of legality.

Such course of conduct is amply illustrated by Dr. Krivitskiy's prompt offer of Dalmane, a Schedule IV controlled substance, upon Mr. Cook's request for "something to make me sleep," without making any effort or inquiry to determine the cause, nature, or extent of any "sleep problems" Mr. Cook might have. Significantly, Mr. Cook's request for sleep medication had been immediately preceded by his request for something to make him "feel good" and by Dr. Krivitskiy's refusal of that request as being "against the law."

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Similarly, Dr. Krivitskiy's December 6, 1984, prescribing of Adipex-P for Mr. Cook resulted from a November 27, 1984, conversation between Dr. Krivitskiy and Mr. Cook, where Mr. Cook had suggested he would like stimulants to keep him awake and Dr. Krivitskiy had advised him that it would be "against the law" to prescribe stimulants for that purpose, though they could be prescribed for weight reduction. Dr. Krivitskiy, upon Mr. Cook's suggestion that he could lose weight and could pay for the weight medication, instructed him to make an appointment for weight control. In subsequently prescribing Adipex-P, a Schedule IV controlled substance, for Mr. Cook on December 6, 1984, Dr. Krivitskiy failed to perform or document appropriate examination or evaluation to determine indication (obesity) or contraindication for this patient. Even though the PDR indicates that this drug can elevate the blood pressure, no blood pressure is noted in the patient record on the dates when Dr. Krivitskiy prescribed Adipex-P for Mr. Cook. Furthermore, the after-the-fact calculations (Respondent's Exhibit D) which Dr. Krivitskiy presented at hearing suggest that Mr. Cook would not have fallen within Dr. Krivitskiy's own definition of obesity on December 6, 1984, at a weight of 214 lbs. Dr. Krivitskiy's 1985 prescribing of this drug for Mr. Cook, even though the patient's weight at that time might have justified treatment, was also not justified by the performance or documentation of appropriate examination or evaluation. Such acts and omissions demonstrate Dr. Krivitskiy's failure to use reasonable care discrimination in the administration of drugs and/or failure to employ acceptable scientific methods in the selection of drugs, as well as his apparent disregard for establishing valid therapeutic purpose for and use of a stimulant controlled substance. As for Dr. Krivitskiy's October, 1985, prescribing of Adipex-P, his authorization of a refill on that prescription suggests his lack of intent to monitor Mr. Cook's progress in the weight reduction program, which Dr. Krivitskiy claimed he believed Mr. Cook was sincere about despite Mr. Cook's earlier statement that he had not been using the drug for this purpose.

Dr. Krivitskiy's prescribing of Librium and Soma for Mr. Cook likewise failed to conform with minimal standards of care, to demonstrate acceptable scientific methods in the selection of drugs, and/or to exhibit legitimate therapeutic purpose for such prescribing. Dr. Krivitskiy prescribed Librium, a Schedule IV controlled substance, solely upon Mr. Cook's unverified representation that he was receiving this drug from another physician. Dr. Krivitskiy's claim, that he had prescribed this drug because of Mr. Cook's obvious nervousness, is not supported by any evidence of evaluation or documentation of symptoms in the patient record. Furthermore, the testimony of Dr. Samuel Deutsch, Dr. Krivitskiy's own expert witness, indicates that appropriate evaluation and follow-up are required in the utilization of Librium, for which controlled substance Dr. Krivitskiy provided Mr. Cook with post-dated prescriptions upon this patient's request for a "month's supply." Likewise, the evidence in this Matter does not support Dr. Krivitskiy's claim that he prescribed Soma because Mr. Cook was obviously tense and rigid. The tape recording of the October 25, 1985, visit indicates that Dr. Krivitskiy prescribed this noncontrolled drug, indicated for the relief of acute, painful musculoskeletal conditions, to compensate for his denial of Mr. Cook's request for Dalmane. The patient record contains no complaint, symptom, or diagnosis to support or establish a legitimate therapeutic purpose for Soma. There was no indication in the evidence and testimony presented that Dr. Krivitskiy considered treatment modalities other than the prescribing of controlled substances for Mr. Cook's "nervousness."

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Dr. Krivitskiy's concomitant administration of Librium and Dalmane, both drugs with central nervous system depressant effects, potentially additive, also constitutes failure to use reasonable care discrimination in the administration of drugs and/or failure to employ acceptable scientific methods in the selection of drugs for treatment of disease. Although in 1985 Dr. Krivitskiy refused to prescribe Librium and Dalmane in combination, his substitution of Soma, a noncontrolled central nervous system depressant, for the Dalmane also ignores the manufacturer's warnings as to potential additive effects. In addition to those inappropriate combinations, Dr. Krivitskiy prescribed Adipex-P for weight reduction in combination with Librium, which has appetite-stimulating action.

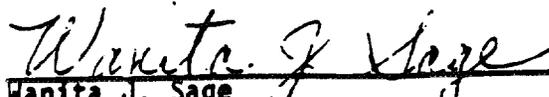
Dr. Krivitskiy's providing of post-dated prescriptions at Mr. Cook's request in December, 1984, and October, 1985, clearly demonstrates failure to use reasonable care discrimination in the administration of drugs. Although Dr. Krivitskiy claimed that he had provided those post-dated prescriptions instead of authorizing refills so that early refills could not be obtained, either refills or post-dated prescriptions would make controlled substances available to the patient without the benefit of appropriate examination, evaluation, or monitoring by a physician over an extended period of time. Such practice falls below minimal standards of care for physicians and demonstrates failure to use reasonable care discrimination in the administration of drugs.

Dr. Krivitskiy's acts and omissions with regard to his "treatment" of Mr. Cook violate the provisions of law set forth above, and are not significantly mitigated by the fact that Dr. Krivitskiy refused to prescribe to another undercover agent. Dr. Krivitskiy's conduct with regard to Mr. Cook reflects an apparent lack of true concern for patient welfare, as well as a willingness to circumvent the law and standards of his profession in a manner which is totally unacceptable in a physician licensed to practice in this state.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Leonid Krivitskiy, M.D., to practice medicine and surgery in the State of Ohio shall be and is hereby REVOKED.

This Order shall become effective 30 days from the mailing of notification of approval by the State Medical Board of Ohio, except that Dr. Krivitskiy shall immediately be ineligible to hold or to apply for a Drug Enforcement Administration certificate and shall not order, purchase, prescribe, dispense, administer, or possess any controlled substances, except for those prescribed for his personal use by another so authorized by law. Further, in the interim, Dr. Krivitskiy shall not undertake the care of any patient not already under his care.


Wanita J. Sage
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF NOVEMBER 9, 1988

REPORTS AND RECOMMENDATIONS

Mr. Costantini, Ms. Belenker, Ms. Thompson and Mr. Dilling left the meeting at this time.

Dr. Stephens advised that the findings and orders appearing on the Board's agenda are those in the matters of Dr. Charles Pritchard, Dr. Leonid Krivitskiy, Dr. Marie DiLauro and P.A. Joy Hammond, Dr. Raymond Grier, and Dr. Charles Shin.

Dr. Stephens continued that since distribution of the agenda materials, Dr. Charles Shin has reached a settlement agreement with the Board, which will be presented for ratification at the December meeting.

Dr. Stephens also noted that objections have been filed in the matter of Dr. Marie DiLauro and P.A. Joy Hammond. The Board at this time read those objections.

Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Charles P. Pritchard, D.O., Leonid Krivitskiy, M.D., Marie N. DiLauro, M.D., Joy L. Hammond, P.A., and Raymond E. Grier, M.D. A roll call was taken:

ROLL CALL:	Dr. Gretter	- aye
	Dr. Kaplansky	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye
	Dr. Stephens	- aye

.....

REPORT AND RECOMMENDATION IN THE MATTER OF LEONID KRIVITSKIY, M.D.

Mr. Costantini returned to the meeting at this time.

Dr. Stephens stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board Members present.

Dr. Stephens advised that a motion to orally address the board has been submitted by Mr. Dye, Dr. Krivitskiy's attorney. Three affirmative votes are necessary to grant this motion.

MR. ALBERT MOVED TO GRANT MR. DYE'S MOTION TO ORALLY ADDRESS THE BOARD. MR. JOST SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:

Dr. Gretter	- aye
Dr. Kaplansky	- aye
Dr. Rauch	- abstain
Mr. Albert	- aye
Dr. O'Day	- aye
Ms. Rolfes	- aye
Mr. Jost	- aye

The motion carried.

Dr. Stephens advised Mr. Dye that there is not a court reporter present, but instead the Board's minutes serve as the Board's official record of the meeting. Mr. Dye stated that he did not have any objection to the absence of a court reporter.

Mr. Dye stated that he represented Dr. Krivitskiy during an unusual hearing. He noted that the procedure interfered somewhat with the presentation of the matter. The hearing process began with Dr. Oxley as hearing officer, and a year went by after Dr. Oxley's retirement before the case was picked up again and additional evidence was proffered.

Mr. Dye noted that Dr. Krivitskiy was charged with: failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease; selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes; and a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to a patient is established.

Mr. Dye continued that the Medical Board investigator who investigated Dr. Krivitskiy weighed at all times during the investigation between 214 and 223 pounds. Mr. Dye stated that, according to his height, build, and age, the investigator should have weighed between 165 and 180 pounds. The investigator was examined, and was prescribed small dosages of Adipex. Mr. Dye stated that many physicians would have made the same recommendation when considering the investigator was more than 20% overweight. He noted that the investigator also made some subjective complaints about anxiety.

Mr. Dye continued that mention was made of the investigator's stating to Dr. Krivitskiy that he needed something to make him sleep, rather than simply telling Dr. Krivitskiy that he couldn't sleep. Mr. Dye noted that Dr. Krivitskiy is an Russian immigrant and is not skilled enough in the English language to recognize the subtle nuances. Mr. Dye referred the Board to Dr. Krivitskiy's own written objections for a sample of his own syntax.

Mr. Dye stated that the bottom line is that drugs were prescribed by Dr. Krivitskiy for the Board's investigator after Dr. Krivitskiy listened to his subjective complaints, and determined that the investigator was overweight. Mr. Dye stated that he believes that the investigator entrapped Dr. Krivitskiy into giving him the medication.

Mr. Dye continued that he believes it is relevant that a second investigator was sent to Dr. Krivitskiy's office who wanted diet pills but was denied them because she was not overweight. Mr. Dye stated that it is important that the Board compare the treatment Dr. Krivitskiy gave the two investigators, one of whom was overweight

and the other who was not.

Mr. Dye stated that Dr. Krivitskiy has not prescribed diet pills for three years, and never prescribes Schedule II drugs. A police officer from the Columbus Narcotics unit testified on Dr. Krivitskiy's behalf, stating that Dr. Krivitskiy has been helpful to the police department and has alerted the police if he feels that patients have been shopping around for drugs. Dr. Krivitskiy has tried to be a good citizen. Mr. Dye stated that he believes the Board can see that this is a matter of a misunderstanding, and asked for the Board's consideration in considering all the evidence submitted.

Mr. Costantini stated that it is true that there were arguably legitimate complaints made warranting the medications in question, but those complaints only took place after illegitimate requests for those drugs were honored. Mr. Costantini stated that when the Board looks at the transcript of the taped conversation of the Board's investigator, Mr. Eley, with Dr. Krivitskiy, it is very clear that Dr. Krivitskiy engaged in an accomodation process to give Mr. Eley the drugs requested. Dr. Krivitskiy should have been aware that Mr. Eley wanted the drugs for other than medically indicated purposes.

Mr. Costantini stated that if the Board looked at the record as a whole, it would come to the conclusion that the hearing officer's findings were correct.

MR. JOST MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF LEONID KRIVITSKIY, M.D. MS. ROLFES SECONDED THE MOTION.

DR. GRETTER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF LEONID KRIVITSKIY, M.D., BE AMENDED TO READ AS FOLLOWS:

1. It is hereby ORDERED that the certificate of Leonid Krivitskiy, M.D., to practice medicine and surgery in the State of Ohio be REVOKED. Such revocation is stayed, and Dr. Krivitskiy's certificate is hereby indefinitely suspended for at least 6 months.
2. The State Medical Board shall not consider reinstatement of Dr. Krivitskiy's certificate unless and until the following requirements are met:
 - a. Dr. Krivitskiy shall submit a properly completed application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Krivitskiy shall provide documentation of successful completion of a pharmacology course approved in advance by the Board.
 - c. Dr. Krivitskiy shall take and achieve a passing score on the Test of Spoken English.
3. Upon reinstatement, Dr. Krivitskiy's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Krivitskiy shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

- b. Dr. Krivitskiy shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of probation.
 - c. Dr. Krivitskiy shall appear in person for interviews before the full Board or its designated representative at 3 month intervals, or as otherwise requested by the Board.
 - d. Dr. Krivitskiy shall keep a log of all controlled substances prescribed, dispensed or administered in the format specified by the Board, and shall submit such log at each appearance before the Board or its representative, and at such other times as the Board requests.
 - e. In the event that Dr. Krivitskiy should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Krivitskiy must notify the State Medical Board in writing of the dates of departure or return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
 - f. Dr. Krivitskiy shall not engage in the solo practice of medicine. Prior to his resumption of practice, Dr. Krivitskiy shall submit to the Board, and receive its prior approval for, a plan of practice limited to a supervised structured environment in which Dr. Krivitskiy's activities will be overseen and supervised by another physician. Dr. Krivitskiy shall not resume the practice of medicine until he has received prior written approval of his practice arrangement from the Board.
4. If Dr. Krivitskiy violates the terms of this Order in any respect, the Board, after giving Dr. Krivitskiy notice and the opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.
 5. Upon successful completion of probation, Dr. Krivitskiy's certificate will be fully restored.

This Order shall become effective 30 days following the mailing of notification of approval by the State Medical Board. Prior to the effective date of this Order, Dr. Krivitskiy shall not undertake treatment of any patients other than those previously under his care, and shall maintain a log of all controlled substances prescribed, administered or dispensed.

DR. KAPLANSKY SECONDED THE MOTION.

Dr. Gretter stated that he carefully read the transcript in this matter, and the facts presented, and he believes that this case involves problems with only one patient. Dr. Krivitskiy did see two patients, one of whom he felt didn't need treatment.

Dr. Gretter continued that in the treatment of the one patient there were two things which stood out and raised concerns for him: 1) Dr. Krivitskiy did prescribe Librium and Dalmane for the patient, which concerned him as being a little

inappropriate. 2) Dr. Gretter stated that the Board did have the opportunity to review Dr. Krivitskiy's office records, which were a bit scanty. Several items in the physician examination were not noted in the record. The record did show that a single weight was taken. Dr. Gretter stated that the only things he found wrong were the inappropriateness of Dr. Krivitskiy not performing an entire examination, and Dr. Krivitskiy's prescribing of the medications mentioned.

Ms. Rolfes asked Dr. Gretter if he would be amenable to adding a requirement that he take and pass the SPEX in addition to the other requirements for reinstatement. She stated that she feels this test is necessary to prove the physician's competency in view of Dr. Krivitskiy's prescribing practices.

Dr. Stephens stated that he didn't think that Dr. Krivitskiy's competence was in question in areas beyond prescribing.

Mr. Jost stated that there was some question raised as to Dr. Krivitskiy's competence in recordkeeping. Mr. Jost stated that he is a little troubled with the position that when only one patient is involved the Board can't do much. He stated that there is a limit as to how many patients can be brought before the Board to testify.

Mr. Jost stated that he will defer to the physician members of the Board as to how inappropriate Dr. Krivitskiy's practice was. He added that it seemed there was conflicting evidence as to exactly what happened. The hearing officer heard a good bit of evidence and made a recommendation based on the witnesses' testimony. Mr. Jost stated that the best evidence in this case is the transcript. He continued that it seemed to him that Dr. Krivitskiy's practice was to give out medication with little investigation. Mr. Jost stated that he would like to see Dr. Krivitskiy be required to take the SPEX to resolve all questions of competency.

Dr. Gretter stated that he is concerned about Dr. Krivitskiy's prescribing practices, which is why he is recommending that Dr. Krivitskiy take a course in pharmacology. He continued that he doesn't have an opinion concerning Dr. Krivitskiy's competency, and is hesitant to recommend that he take the SPEX.

Dr. Kaplansky asked why Dr. Krivitskiy was investigated. Mr. Bumgarner reminded the Board that they are to consider only the record.

Mr. Jost stated that there was testimony in the record as to the reasons for the investigation, and as he remembers it, there was concern about Dr. Krivitskiy's prescribing practices. The only testimony concerns one or two patients.

Dr. Gretter noted that his alternative order requires that Dr. Krivitskiy maintain a log of controlled substances and have a supervising physician. Dr. Gretter again stated that he cannot accept the recommendation that Dr. Krivitskiy be required to take the SPEX.

Dr. O'Day noted that Dr. Gretter's order would require Dr. Krivitskiy to take and pass a pharmacology course prior to reinstatement.

Ms. Rolfes stated that she believes Dr. Krivitskiy could take the pharmacology examination now and probably pass it. She added that she has little experience with what the course entails, and she isn't sure the Board is dealing with the real issue by requiring only the pharmacology course. She again stated that Dr. Krivitskiy's

prescribing practices indicate a question of competency.

Dr. Gretter stated that the issue the Board has before it is essentially Dr. Krivitskiy's prescribing practices. The medications he prescribed were potentially dangerous drugs, but not real heavy medications.

Ms. Rolfes noted that most of the drugs he prescribed were in Schedule IV.

Dr. Gretter stated that his order answers the question of prescribing practices, and allows the Board to follow through in supervising Dr. Krivitskiy.

Mr. Jost asked what is meant by a "pharmacology course."

Dr. O'Day stated that, as in previous cases, the Board has approved the Wright State Pharmacology Course.

Ms. Rolfes stated that the Wright State course is a six-month course.

Dr. O'Day added that it is a comprehensive course, and the students taken it are carefully evaluated. The test given at the completion of the course is a difficult one.

Ms. Rolfes stated that the course can either be taken at the university itself, or can be done through audiotapes.

Mr. Albert commented that there would be more credibility attached to taking the course at the university rather than through audiotapes, although the test is the same.

A roll call vote was taken on Dr. Gretter's motion:

ROLL CALL VOTE:	Dr. Gretter	- aye
	Dr. Kaplansky	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

DR. KAPLANSKY MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER AS AMENDED IN THE MATTER OF LEONID KRIVITSKIY, M.D. DR. GRETTOR SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Gretter	- aye
	Dr. Kaplansky	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43266-0315

December 4, 1985

Leonid Krivitskiy, M. D.
2691 East Main Street
Columbus, Ohio 43209

Dear Doctor Krivitskiy:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation for one or more of the following reasons:

1. On or about November 27, 1984, you were paid an initial office visit by one Chuck E. Cook, also known as Charles A. Eley, Investigator for the State Medical Board of Ohio. The patient was asked to provide a medical history, and you recorded his blood pressure and listened to his chest with a stethoscope. You performed no further physical examination of the patient. You asked the patient why he was there, and he responded that he wanted something to make him feel good. The patient did not state a medical complaint. You advised the patient that you would not write a prescription for anything to make him feel good, and proceeded to write and issue to him prescriptions for seven (7) capsules of Dalmane 30 mg., a schedule 4 Controlled Substance, and twenty-one (21) capsules of Librium 10 mg., a schedule 4 Controlled Substance. You advised the patient that you would see him again in a week. The patient was charged a fee of \$25.00 for this visit.
2. On or about December 4, 1984, you were paid a return office visit by Chuck E. Cook, also known as Charles A. Eley. The patient advised you that he was there for weight, and also for the other two medicines you had prescribed for him on his previous visit. The patient did not state any additional medical complaint. You weighed the patient, who was fully clothed and wearing a hat and jacket, but you performed no further physical examination. You wrote and issued to the patient prescriptions for thirty (30) capsules of Adipex-P, a Schedule 4 Controlled Substance, seven (7) capsules of Dalmane 30 mg., and twenty-one (21) capsules of Librium 10 mg. The patient was charged \$20.00 for the office visit, which he paid using a voucher issued by the Allen County Welfare Department, and an additional \$25.00 for the "weight visit", which you required that he pay in cash.

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Leonid Krivitskiy, M. D.
December 4, 1985

3. On or about December 13, 1984 you were paid a return office visit by Chuck E. Cook, also known as Charles A. Eley. The patient stated no medical complaint, but indicated he wanted the same drugs he had received on his last visit. You performed no physical examination of the patient. You wrote and issued to the patient prescriptions for seven (7) capsules of Dalmane 30 mg., and twenty-one (21) capsules of Librium 10 mg. After the patient advised you that he wanted a month's supply of each drug, you wrote and issued to him prescriptions dated December 20, 1984 for seven (7) capsules of Dalmane 30 mg., and twenty-one (21) capsules of Librium 10 mg., and prescriptions dated December 27, 1984 for seven (7) capsules of Dalmane 30 mg. and twenty-one (21) capsules of Librium 10 mg.
4. On or about September 25, 1985, you were paid a return office visit by Chuck E. Cook, also known as Charles A. Eley. The patient did not state a medical complaint. You made no inquiry as to the patient's reason for seeing you, but advised him that you could not give him Dalmane and Librium together. You wrote and issued to the patient prescriptions for ninety(90) capsules of Librium 10 mg. and thirty (30) capsules of Adipex-P. After issuing the prescriptions, you weighed the patient while he was fully clothed. You performed no further physical examination of the patient.
5. On or about October 25, 1985, you were paid a return office visit by Chuck E. Cook, also known as Charles A. Eley. Upon meeting with the patient you asked him if he was there for weight, and he responded that he wanted something for sleep also. After you weighed the patient you advised him that the weight medication you had previously prescribed was also used to treat depression. You asked the patient if he was depressed and he responded that he was not. You performed no further physical examination of the patient, but proceeded to write and issue to him prescriptions for ninety (90) capsules of Librium 10 mg., and ninety (90) capsules of Soma 350, a prescription drug. The patient stated that he could not come for a visit the next month, and that you had issued pre-dated prescriptions during a past visit, and he requested that you do so again. You wrote and issued to the patient additional prescriptions dated November 25, 1985 for ninety (90) capsules of Librium 10 mg., and ninety (90) capsules of Soma 350. The patient left your office, but returned several minutes later, asking if he could get something for depression. You stated that you had given him Librium for depression, but he responded that he was depressed because he could not get his weight loss medication. You advised the patient that he was not losing weight, and refused to issue a prescription. The patient stated that he could lose weight and would use the drugs for that. After your receptionist told you to give the patient a prescription, you wrote and issued to him a prescription for thirty (30) capsules of Adipex-P.

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Leonid Krivitskiy, M. D.
December 4, 1985

Your acts, in the above paragraphs (1), (2), (3), (4), and (5), individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as that clause is used in Section 4731.22(B)(2), Ohio Revised Code.

Further, such acts in the above paragraphs (1), (2), (3), (4), and (5), individually and/or collectively, constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, such acts in the above paragraphs (1), (2), (3), (4), and (5), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing that request must be made within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or you may present your positions, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing made within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of all referenced material are enclosed for your reference.

Very truly yours,



Henry G. Cramblett, M. D.
Secretary

HGC:caa

enclosure

CERTIFIED MAIL NO. P 569 361 848
RETURN RECEIPT REQUESTED

Letter Mailed 12-6-85