

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

WESTSCOT G. KRIEGER, M.D., :
RESPONDENT. :

FINAL DECISION AND ORDER
92 MED 53

The parties to this action for the purposes of § 227.53, Wis. Stats., are:

Westscot G. Krieger, M.D.
443 Skyline Court
Eau Claire, WI 54703

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Westscot G. Krieger, M.D. (dob 8/12/53) is and was since October 26, 1984, a physician and surgeon licensed in the State of Wisconsin pursuant to license #26410.
2. The Respondent did, on a day in November, 1991, share marijuana with K.G., a personal friend who was not a patient, for non-medicinal purposes.
3. Respondent did, on another occasion in 1984, deliver a quantity of Ritalin™, a Schedule II controlled substance, to the same friend, for non-medicinal purposes, prior to being licensed in Wisconsin.

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4. Respondent did, on 7/9/91, prescribe Cylert™, a Schedule IV controlled substance, for a C.L., a friend who was not a patient, for non-medicinal purposes.

5. Respondent did, on or about 3/10/92, order for his own use, 100 Cylert™ from a drug wholesaler, and did on dates after 3/10/92, take this drug without a prescription from another practitioner, and for non-medicinal purposes.

6. Respondent has been drug and alcohol dependent. On April 20, 1992, as a result of the board's investigation, respondent entered in-patient treatment at the Mayo Clinic, Rochester Minnesota, and has continued in treatment since that time.

CONCLUSIONS OF LAW

7. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(2), Wis. Stats.

8. The Board is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

9. The conduct described in paragraphs 2-6, above, violated §§161.41(1)(h)1., 161.41(1m)(i), and 161.43(1)(a), Wis. Stats., and § Med 10.02(2)(h), (i), (p) and (r), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license to practice medicine and surgery of respondent is **SUSPENDED** for 90 days, effective April 20, 1992.

IT IS FURTHER ORDERED, that respondent's license is **LIMITED** in the following respects:

(a) Respondent shall not consume alcohol or any controlled substance except upon prescription of another practitioner for a valid medical purpose.

(b) Respondent shall continue in and fully participate in the treatment program prescribed by the Mayo Clinic, and shall keep on file with all treating and monitoring facilities and the board and the Department's Division of Enforcement, releases of information for his medical records including those relating to mental health and AODA. He shall instruct all treating professionals in his treatment program to report any relapse which includes the ingestion of alcohol or a controlled substance, and any positive results of a body fluid screen which indicate such ingestion, directly to the board.

(c) Respondent shall appear before the board at least annually and at such times and places as the board may direct. Respondent shall initiate contact the board to arrange for annual appearances, which shall commence in July 1994.

(d) Respondent shall report all medications and drugs, over-the-counter or prescription, with the exception of aspirin, acetaminophen, and NSAIDs, taken by him to his supervising physician within 24 hours of ingestion or administration and shall identify the person or persons who prescribed, dispensed, administered or ordered the medications or drugs for him. This does not negate respondent's other responsibilities under this order, and in particular his responsibility not to ingest any controlled substance or alcohol, without a valid prescription.

(e) Respondent must participate in a program of random witnessed monitoring for controlled substances and alcohol in his blood and/or urine on a frequency of not less than four (4) times per month, at an acceptable monitoring facility. If the physician or therapist supervising his plan of care or her employer deems that additional blood or urine screens are warranted, respondent shall submit to such additional screens. At least one of the monitoring tests per month shall include a test for pemoline. If any specimen is positive or suspected positive for any controlled substance or alcohol, the specimen shall be re-examined using gas chromatography or mass spectrometry as a confirmatory test, and respondent shall promptly submit to additional tests and examinations as his supervisor in the McBride program shall determine as appropriate to clarify or confirm the positive or suspected positive test result. Respondent may petition for a reduction in the required number or frequency of screens at such times as his treating professionals may support.

(f) Respondent is responsible for obtaining a monitoring facility and reporting system acceptable to the Board, as well as for all costs incurred in conjunction with the monitoring and reporting required. The McBride program at Milwaukee Psychiatric Hospital, where respondent is now participating, is an acceptable facility.

To be an acceptable program, the monitoring facility shall agree to provide witnessed gatherings of specimens for evaluation. The facility must agree to maintain a custody record of all specimens, and to confirm positive test results with gas chromatography or mass spectrometry. It shall further agree to file an immediate report directly with the Board upon such failures to participate as: if respondent fails to appear upon request; or if a drug or alcohol screen proves positive; or if respondent refuses to give a specimen for analysis upon a request authorized under the terms of this Order.

(g) Respondent shall arrange for quarterly reports to the Board from his employer evaluating his work performance; from the monitoring facility (if applicable) providing the dates and results of the screenings performed; and from his supervising therapist at the McBride program, evaluating respondent's attendance and progress in therapy as well as evaluating his level of participation at NA/AA meetings. The reports are due on July 1, 1993, and each three months thereafter.

(h) Respondent shall report to the Board any change in employment status, change of residence address or phone number, within five (5) days of any such change.

(i) Respondent may petition the board for removal of all or part of these limitations after five years, but the board shall determine, in its sole discretion, the terms and conditions under which the limitation may be reduced or removed. Any denial of such a request shall not be deemed a license denial and shall not entitle respondent to a separate hearing on the board's decision. He shall provide a copy of this Order to his employer, and to all subsequent employers, and to his treating professionals.

IT IS FURTHER ORDERED, that respondent's license is LIMITED in the following respect: respondent shall not prescribe, dispense, or possess, or attempt to prescribe, dispense, or possess, any controlled substance until he has taken and passed the course in Prescribing Controlled Dangerous Substances offered by the University of Medicine & Dentistry of New Jersey. This limitation is STAYED until May 30, 1993. Respondent shall arrange for the course sponsors to directly report to the board the results of respondent's attendance and evaluations.

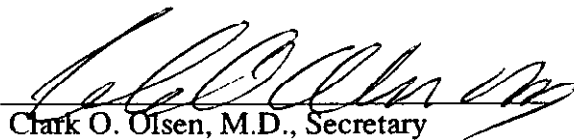
IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter in the amount of \$4,000, within 1 year of this order.

IT IS FURTHER ORDERED, that violation of any of the terms of this Order may result in a summary suspension of respondent's license; the imposition of additional conditions and limitations; or the imposition of other additional discipline.

Dated this 27 day of May, 1993.

WISCONSIN MEDICAL EXAMINING BOARD

by:


Clark O. Olsen, M.D., Secretary

/akt
ATY2-3473

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST :

WESTSCOT G. KRIEGER, M.D.,
RESPONDENT. :

STIPULATION
91 MED 53

It is hereby stipulated between the above Respondent, personally on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. Respondent is aware of and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. By entering into this Stipulation, Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is aware of his right to seek legal representation and has obtained legal advice prior to execution of this Stipulation.

5. With respect to the attached Final Decision and Order, Respondent does not admit but does not contest the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that either the Board or the Respondent has been prejudiced or biased in any manner by the consideration of this attempted resolution.

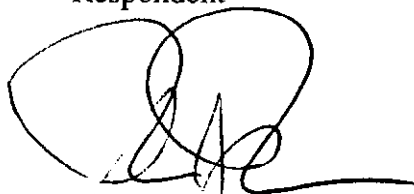
7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10. Respondent is informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation will be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.

Westcott & Krieger 5/25/93
Respondent Date



Bruce Rosen, Attorney for Respondent

5/21/93

Date



Arthur Thexton, Prosecuting Attorney
Division of Enforcement

5/27/93

Date

/at
ATY2-

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is June 3, 1993.

227.49 Petition for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

Parties and proceedings for review. (1) Except otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

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