

IN THE FIRST JUDICIAL DISTRICT
DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

FILED
CLERK OF DIST COURT
2016 JUL -6 AM 11:16
LEAVENWORTH CO. KS

In Re: Request for Affidavit or Sworn
Testimony...on or after July 01, 2014

Case No. 2016 CR 363

**ORDER ON REQUEST FOR DISCLOSURE
OF AN AFFIDAVIT OR SWORN TESTIMONY**

Pursuant to K.S.A. 22-2302 and 22-2502

On this 5th day of July 2016, the Court considers the Request for the Affidavit or Sworn Testimony in Support of a Warrant or Summons filed herein.

The Court finds jurisdiction and venue are proper. Notice to parties and those required to receive notice has been given if required by law.

The Court, having reviewed the proposed redactions, and/or having reviewed the motion to seal the affidavits or sworn testimony, and/or having received no proposed redactions or motion to seal from the prosecutor, defendant, or defendant's counsel finds as follows:

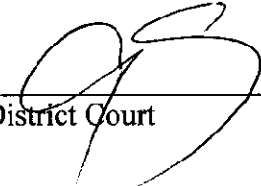
CHOOSE **ONE** OF THE FOLLOWING:

1. The affidavit(s) or sworn testimony shall be released with the redactions proposed by the prosecutor with additional redactions made by the court.
2. The affidavit(s) or sworn testimony shall be released with the redactions proposed by the defendant or defendant's counsel.
3. The affidavit(s) or sworn testimony shall be released with the redactions ordered by the court.

- 4. The affidavit(s) or sworn testimony shall be sealed and not released.
- 5. The affidavit(s) or sworn testimony shall be released without redaction.

IT IS THEREFORE ORDERED that the affidavits or sworn testimony be released or sealed as indicated above, and is attached.

IT IS SO ORDERED this 5 day of July, 2016.



Judge of the District Court

CONFIDENTIAL

ELECTRONICALLY FILED
2016 Jun 21 PM 3:03
CLERK OF THE LEAVENWORTH COUNTY DISTRICT COURT
CASE NUMBER: 2016-CR-000363

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

Court Case No. _____

Agency Case No. 15-0593

PROBABLE CAUSE SUPPORTING AFFIDAVIT

I, Lt. Josh Patzwald, Leavenworth County Sheriff allege and state:
Officer Name Agency

1. The following offense(s) has/have been committed
K.S.A. 21-5505 (b) (3) Statute Description: Aggravated Sexual Battery

2. The following person is alleged to have committed said Offense(s)

Name: Mark Edwin Wisner

Address: 641 E 8th St, Horton KS 66439

SEX: Male Female DL OR STATE ID NO: ~~XXXXXXXXXX~~

SSN: ~~XXXXXXXXXX~~ DOB: ~~XXXX~~1951 HAIR COLOR: Whi EYE COLOR: Blu

ALIAS NAMES USED: N/A

ALIAS SSN USED: N/A ALIAS DOB USED: N/A

3. This affidavit is based on the following facts:

The Leavenworth County Sheriff's Office is working in conjunction with the Department of Veterans Affairs Office of Inspector General to investigate claims regarding Physician's Assistant Mark Wisner utilizing his position as a medical practitioner to commit sexual battery crimes against patients.

On 05/22/2014, VA OIG Agent Kerry Baker had occasion to interview Wisner.

On 11/20/2014, Agent Baker and I interviewed a past patient of Wisner's, D.L.M. D.L.M. provided information, and requested a criminal complaint be filed on his behalf.

On 01/23/2015, Agent Baker and I conducted an interview with Mark Wisner.

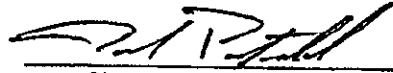
Based upon information provided by D.L.M. and information obtained from Wisner during two separate interviews, probable cause exists to support the following statements of fact:

- 1) Mark Wisner touched D.L.M. with the intent to satisfy his own sexual desires.
- 2) At the time of the touching, D.L.M. was sixteen or more years old.
- 3) The touching was committed without the consent of D.L.M. under circumstances when he was incapable of giving consent because of the effect of prescription narcotic drugs, which

condition was known by Mark Wisner.

4) This act occurred on multiple dates, between 09/29/2010 and 05/19/2014 in Leavenworth County KS.

I declare under penalty of perjury that the foregoing is true and correct. Executed on: 02/16/2015

A handwritten signature in black ink, appearing to read 'M. Wisner', written over a horizontal line.

Signature of Declarant

STATEMENT OF PROBABLE CAUSE

Date: 02/06/2015

Case Report Number: 2014-3151-IC-77

I, Kerry F. Baker, Special Agent, Department of Veterans Affairs, Office of Inspector General, knowing that false statements on this form are punishable by law, state that the facts contained herein are true.

I have probable cause to believe that on or about November 2013 through May 2014, at 4101 S. 4th Street, Leavenworth, Kansas 66048, Mark Edwin WISNER (white male; DOB: [REDACTED] 1951; SS#: xxx-xx-[REDACTED]) committed one or more criminal offense(s).

The facts supporting this belief are as follows:

On 5/15/14, the Department of Veterans Affairs Medical Center (VAMC) Leavenworth, Kansas Police Department contacted VA Office of Inspector General (OIG) Criminal Investigative Division (CID) in Kansas City regarding a possible sexual assault involving Physician's Assistant Mark WISNER.

A patient examined by WISNER on 5/15/14 reported that WISNER's exam of his genitalia exceeded what he believed to be necessary. A witness accompanying the patient to the exam room confirmed the allegations.

A VA OIG database review revealed that WISNER was the subject of a 2012 sexual assault allegation that was not proven.

An NCIC criminal history report dated 5/19/14 revealed a misdemeanor arrest on 6/25/87 in San Bernardino, California for "Disorderly Conduct: Solicit Lewd Act." No disposition was available per NCIC.

On 5/22/14, Special Agent Ray Vasil and I interviewed VAMC Leavenworth, Kansas, Physician Assistant Mark WISNER at his residence located at 641 E. 8th Street, Horton, Kansas. Upon greeting WISNER we presented our current, respective VA OIG credentials. I thoroughly explained that we are criminal investigators investigating criminal allegations. I provided WISNER with a copy of an advisement of his rights as a federal employee as set forth in the Garrity Warning noting that the matter under investigation is "sexual assault / patient abuse." WISNER read and signed the warning. After WISNER indicated his willingness to speak with us about this matter I carefully explained that he could not be forced to speak with us but that if he chose to do so he must be truthful as providing false statements to federal agents can be charged as a federal offense. I further advised WISNER that he could terminate the interview at any time and request legal representation if he so desired. WISNER acknowledged that he

understood everything I had just explained to him and voluntarily provided the following information:

WISNER has been a Physician Assistant (PA) at VAMC Leavenworth since September 2008. In this capacity he is required to administer physical exams for compensation and pension claims and also conducts physicals for new VAMC Leavenworth patients.

As I had recently learned of multiple patient complaints against WISNER, I expressed my concern to WISNER about his exam practices, WISNER responded by explaining that he treats all patients equally regardless of their sexuality. If a patient admitted to being homosexual, WISNER would then ask lifestyle questions. He would offer three condoms to his single patients. He added that he refused to turn in gay soldiers while he was active-duty in the military. He would strongly advise those soldiers to restrict their homosexual behavior to off-post locations.

When asked about alleged inappropriate comments during exams, WISNER admitted that some of his comments could have been misconstrued. He admitted that he may have spoken about tattoos on penises and that he may have made comments about veterans being "studs." WISNER insisted that any such comment would have been made an attempt at humor to put patients at ease. WISNER then added, "I probably did say it." He further stated that "these guys never said no."

I asked WISNER when he lived in San Bernardino, California. He seemed surprised by the question but replied he'd never lived in that city. I then asked him about being arrested in San Bernardino in 1987. When WISNER responded that he didn't think he'd been "arrested" per se, I clarified by asking if law enforcement officers put handcuffs on him and transported him to a police location. He said yes. I asked him to explain the arrest.

WISNER initially explained that his encounter with police was the result of him flashing his genitals at an adult bookstore based on a bet. Upon further explanation, I learned that WISNER had placed his penis through a hole in a wall at the bookstore. He agreed that this is known as a "glory hole" and that a man would typically place his penis through the hole in anticipation of oral sex. He acknowledged that there was someone on the other side of the wall and that the person may have been a young man.

When asked if he was curious about homosexuality, WISNER admitted that he is indeed curious about homosexuality and has been since he was the victim of a sexual assault when he was thirteen years old when his grandfather had masturbated him to ejaculation.

WISNER then confessed that if a veteran patient stated he was gay or if WISNER believed that to be the case, he would in fact "experiment" (fondle the patient's genitals) as long as the patient did not indicate an objection. He thought, based on actions and the nature of their conversation, that these veterans were open to such experimentation. WISNER then admitted that he did touch their genitals more than necessary for the exam in an attempt to satisfy his curiosity. WISNER then opined that it is time for him to discontinue his practice as he has been "letting his guard down" and needs to resolve his personal issues.

WISNER terminated our interview by adding, "If I have to go to prison, I'll deal with that." He was given the opportunity to provide a hand-written, Sworn Statement which he declined. WISNER had nothing further to add to his statement at this time.

On 11/20/14, I responded to Leavenworth County, Kansas Sheriff's Office where Detective Lieutenant Joshua Patzwald and I interviewed veteran [REDACTED] regarding the Mark WISNER investigation. Lt. Patzwald and I presented our current and respective credentials to [REDACTED] who stated substantially as follows:

[REDACTED] stated he first met WISNER in about October 2008 during his initial VA Medical Center (VAMC) in-processing. His initial examination with WISNER included a complete physical. WISNER then continually served as [REDACTED] primary care physician until he separated from VAMC Leavenworth in 2014. During that time, [REDACTED] saw WISNER for multiple health concerns to include but not limited to insomnia, back and knee pain and PTSD. WISNER also prescribed anti-depressants for [REDACTED] until about 2012 or 2013.

[REDACTED] stated that WISNER administered physical examinations periodically at first and looked at his back due to [REDACTED] complaints of chronic back pain. He continued that, as the back pain continued, the physical examinations became increasingly frequent. [REDACTED] now realizes that the physical examinations were focused predominantly in and around [REDACTED] genitals and not on his lower back. WISNER never provided an explanation for the nature or frequency of these genital examinations. [REDACTED] estimated that from the end of 2012 until WISNER'S separation from VAMC Leavenworth, WISNER conducted at least 10 of these genital examinations. [REDACTED] added that he and several other veteran patients bypassed the standard check in procedures and went directly to WISNER without appointments and without signing in. He would simply text WISNER who would respond with his availability. [REDACTED] believed this practice started in about 2013. WISNER would also call in prescription medications early on [REDACTED] behalf to accommodate [REDACTED] business travel schedule.

Upon WISNER'S departure from VAMC Leavenworth, [REDACTED] was assigned Dr. McManaman as his new primary care physician. Dr. McManaman disagreed with WISNER'S high volume of narcotic pain medications, to include a long-term combination of oxycodone and morphine for over a year. [REDACTED] explained that WISNER had never sent him to a pain specialist during the years he'd served as

primary care physician until just prior to WISNER'S separation from VA. Only then was [REDACTED] referred to Dr. Ray at the Pain Management Clinic.

During an appointment with Dr. McManaman, [REDACTED] provided a detailed account of precisely what WISNER did to address [REDACTED] chronic, lower back pain. [REDACTED] explained that WISNER would have him pull down his pants and WISNER would "run his hands" on the inside of [REDACTED] legs. WISNER would then feel around and under [REDACTED] scrotum to "check for tightness" in [REDACTED] lower back. [REDACTED] did not receive an examination of his rectum or penis although WISNER may have moved his penis from side to side during an exam. This procedure happened several times without any further explanation from WISNER. [REDACTED] added that he never questioned the procedures as WISNER had been his primary care for a long time and that he and WISNER knew one another very well. Dr. McManaman opined that [REDACTED] had been sexually assaulted. Dr. McManaman also informed [REDACTED] that WISNER was a physician's assistant rather than a doctor.

[REDACTED] stated that no one since WISNER has conducted any exam even remotely similar to WISNER'S to address his back pain. [REDACTED] attempted to compare WISNER'S to any previous physical exam. He described WISNER'S approach as more sliding his hand up the inside of [REDACTED] thigh. The exams were awkward and sometimes lasted too long. There was no "turn your head and cough."

[REDACTED] explained that over the years he and WISNER developed a trusting friendship that extended far beyond a normal physician/patient relationship and outside VA. He and WISNER would often text one another. WISNER referred to [REDACTED] as "son" and [REDACTED] viewed WISNER as a father figure. [REDACTED] went to WISNER'S home for Christmas in 2013 where [REDACTED] met WISNER'S family. When WISNER separated abruptly from VAMC Leavenworth, he contacted [REDACTED] and explained that his departure was the result of an argument between himself, a patient, and the patient's domestic partner regarding their homosexual relationship. [REDACTED] thought this an odd reason for retiring from VA but did not further pursue a more logical explanation.

[REDACTED] picked up WISNER'S personal effects from VAMC Leavenworth after WISNER'S separation. WISNER later stopped by [REDACTED] home to retrieve his belongings from [REDACTED]

Prior to learning of the allegations against WISNER, [REDACTED] had invited WISNER to his wedding. WISNER did not attend the event. [REDACTED] saw WISNER shortly after the wedding and WISNER stated that he missed the wedding due to car trouble. WISNER told [REDACTED] that he was now teaching at "Hiawatha" and also working for the Army conducting PHAs (Periodic Health Assessments). WISNER last attempted to communicate with [REDACTED] via text. [REDACTED] was not sure the date as he deleted the text.

On 1/23/15, I again interviewed WISNER at his residence along with Lt. Detective Joshua Patzwald, Leavenworth County, Kansas Sheriff's Office. After introductions and advisements, WISNER voluntarily provided the following information:

I explained to WISNER that I had contacted about 50 more of his patients and that there have been several more allegations of unnecessary and/or excessive genital examinations (exams).

We discussed WISNER'S method of building trust with patients to get close enough to try to test the physical bounds. WISNER admitted that he is not able to stop himself before he touches these young men. WISNER admitted that he crossed the professional line and was excessive in his genital exams. When confronted with the fact that the bulk of his victims were a certain type (young, lean, muscular, etc), and asked specifically about the sexual gratification, WISNER maintained that all of his behavior was simply to satisfy his curiosity. He agreed that because he was victimized by his grandfather, he in turn victimized these patients. WISNER admitted that he took steps to keep his victimized patients returning to his practice but added that "it became an ingrained habit." He admitted that he knew that what he was doing to these patients was wrong and that he had no self-control.

WISNER stated that he was more aggressive and had lower inhibitions while taking testosterone. When asked why he then prescribed unnecessary testosterone to at least one of his patients, WISNER blamed a different lab standard and his lack of updated knowledge.

I asked WISNER about his apparent over-prescribing of opiates. I noted that long-term opiate usage would likely result in impairment and lower inhibitions. WISNER denied ever using prescribed opiates to lower inhibitions for the unnecessary and excessive genital exams. He stated that he was often unable to get patients a referral to the pain management clinic for several weeks and that he sometimes tried different pain management techniques but often had to rely on narcotic pain management. I cited a specific patient [REDACTED] who WISNER had prescribed, and left on, high doses of opiates for an extended period of time and who had never been referred to a pain management clinic over the course of a few years. I noted that, due to his excessive medications from WISNER, the patient was likely unable to make sound judgments when assessing the need of the recurring genital exams. WISNER could not offer a rational explanation for the long-term medications and ultimately acknowledged that he could understand how and why this impairment could result in his "seducing" the patient and further acknowledged that if he kept the patients happy they would keep coming back. WISNER agreed that he took active steps to avoid discovery and that he knew what he was doing was wrong.

We next discussed the fact that he treated several patients without appointments, without accurate charting and progress notes, and conducted multiple genital exams which were never mentioned in

progress notes. WISNER agreed that these activities were "a clear case of seduction" and added "I messed up" and that he had "totally and completely no control."

I asked WISNER about his seeming disregard for getting caught just prior to our investigation. He attempted to explain his behavior as "roid rage" due to his increased testosterone dosing. I reminded him that all of this started before he was prescribed testosterone. He agreed then explained that his behavior worsened with the addition of the testosterone.

I next redirected WISNER'S attention to how he chose his victims. He admitted they were all attractive and of a similar body type and that these were the patients receiving unnecessary and excessive genital exams. He continued to deny that sexual assault history contributed to his victim selection. These patients' exams started as typical physical exams including but not limited to hernia exams, testicular cancer exams, urethra exams, etc. WISNER stated these exams should've only taken no more than two minutes and admitted that there would be no need for those same exams to occur at multiple, subsequent exams. He admitted that any such subsequent exam of this nature would have occurred for his own pleasure. Patients who did not fit WISNER'S ideal type would not receive such extensive exams nor would they receive the multiple, subsequent and unnecessary exams. WISNER further explained that he did not always touch the patients' genitals in the unnecessary exams and that sometimes he only had them expose their genitals so that he could simply look at their genitals.

I again asked WISNER specifically about his patients taking long-term, high-volume, narcotic, pain medications. I asked if those patients would likely be impaired enough to affect their ability to assess the appropriateness and necessity of these additional genital exams. WISNER admitted that they would likely be significantly impaired in making those judgments and that he took advantage of that impairment. WISNER admitted again that he lost control.

When asked when he had last contacted patient [REDACTED], WISNER stated it was last fall after [REDACTED] wedding. He sent [REDACTED] a text around Christmas 2014 but did not receive a response. WISNER admitted that [REDACTED] had been to his home and that he had built trust with [REDACTED] that extended outside VA. WISNER stated "I didn't think about (that) I had victimized him until now...I did him wrong." He admitted that [REDACTED] would have been impaired due to his amount of narcotic pain medications prescribed by WISNER. WISNER admitted to going to [REDACTED] home to get his things after separating from VA. WISNER denied any other patient relationships that extended outside VA.

WISNER admitted that the lack of genital exams in progress notes was part of his methodology to avoid getting caught. He added that, if a patient came in without an appointment, there would be no progress note. He could not provide an estimate of how many patients he saw without appointments. WISNER added that walk-in appointments, regardless of age, body type, etc. would not have had progress notes for something small like treatment for a head cold, etc., but admitted that the deliberate lack of progress notes for his victims' genital exams to avoid detection amounted to falsification of documents. WISNER also admitted that he knowingly left genital exams out of progress notes for some of his victims again to avoid detection.

It should be noted that this investigation is ongoing and that additional veterans have been identified and have provided statements alleging similar conduct by WISNER.

Printed Name: Kerry F. Baker

Signature: _____

Kerry F. Baker