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LOCAL

Prosecutors declined to charge doctor after police investigation. Now she's filed a lawsuit



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LANSING — The doctor appointment started like many do.

Following a longer-than-ideal time in the waiting area, a staffer brought the patient back to the exam room. She asked about his height and weight, then took his temperature and blood pressure. She asked about his medical history and why he made that day's appointment.

After another wait, the doctor walked in and started a bit of small talk before getting into the exam.

"Why are you here?" Dr. Eleanore Kue asked the man, who was really an undercover Michigan State Police detective posing as a patient on June 4, 2019.

It was the first of four undercover appointments by MSP officers who were investigating Kue over anti-anxiety prescriptions she wrote out of her Lansing medical office, His Healing Hands Urgent Care Center at 2025 W. Holmes Road. The investigation went on for months. Police obtained search warrants for Kue's medical office, home and bank accounts, and got another doctor to weigh in on the appointments and prescriptions for the undercover officers.

In early 2020, State Police submitted their investigation and request for criminal charges related to health care fraud to the Ingham County Prosecuting Attorney's Office. The request was denied, with an assistant prosecutor writing that he didn't think police could prove the case beyond a reasonable doubt at trial.

More than two years after that denial, Kue and her husband filed a federal lawsuit against the officers and others, alleging an illegal search and seizure, malicious prosecution and due process violations. The lawsuit, in U.S. District Court for the Western District of Michigan, remains ongoing.

The Michigan Attorney General's Office, which is defending the troopers, declined to comment.

In an email to the State Journal, Collin Nyeholt, Kue's attorney, said the heart of lawsuit is that MSP lacked probable cause and that their definition of "red flags" detailed in police reports and warrant requests were, "to put it mildly, extremely questionable."

"We intend to provide significant additional details of what transpired so that when the Court considers whether to dismiss or not, it has all of the relevant facts," he wrote. "We intend to demonstrate that, when the details of the investigation and the actions that were taken after are considered, the Michigan State Police Diversion Investigations Unit lacked probable cause for its actions towards my clients and therefore violated their rights."

'Many red flags'

The four undercover medical appointments all went generally the same.

Officers waited with other patients in the waiting area and then, after brief conversations with Kue, got prescriptions for anti-anxiety medications Bupirone or Klonopin, known generically as clonazepam.

The crux of their investigation and search warrants was that Kue wrote the prescriptions for the officers — and by extension her other patients — without enough examination. They cited "red flags," including waiting hours to see Kue, short appointments once they saw her and what they saw while in the waiting area.

Some patients seemed to know each other and chatted openly, others went outside to smoke while waiting and one was seen "nodding off," which an officer noted in the report that, based on their training and experience, "is consistent with someone under the influence of drugs or alcohol."

Officers also cited Kue's broader prescriptions writing practices, including multiple prescriptions to members of the same family and at least one member of her staff.

"None of this amounts to evidence of criminality," said Nyeholt. "The fact they relied so heavily upon it to justify the extreme actions they took, however, speaks to the lack of probable cause that is at issue in the complaint."

However, it wasn't just the State Police investigators who had concerns about Kue's prescriptions.

In early 2020, as police were wrapping up their investigation, they interviewed a pharmacist at a Walgreen's near Kue's medical office who said the location had stopped filling prescriptions Kue wrote due to the high volume. A Blue Cross Blue Shield investigator told police after they reached out that she was opening a complaint against Kue due to an unusual ratio between billing for office visits and prescriptions.

A doctor troopers had review Kue's work said in his opinion the prescriptions undercover officers received were "not legitimate prescriptions in the usual course of professional practice." They received prescriptions on their first visits and she did not order drug testing, the doctor added.

'Nothing wrong' with Kue's prescriptions

But Nyeholt said complaints, concerns, "red flags" or other issues with his client's practice stem from a lack of understanding about who Kue's patients are and how she approaches their prescription needs.

He said she purposely located her office in south Lansing to treat patients whose life circumstances mean they lack access to "conventional primary care relationships."

Many, he said, are homeless or low income patients.

"As one would expect, given the population she serves, a significant number of her patients have anxiety disorders," Nyeholt said. "There is nothing wrong with a doctor prescribing someone who has anxiety medication for anxiety."

He added that because of addiction concerns, she writes prescriptions for fewer pills, meaning patients need to see her more regularly and she can keep on top of their use.

Kue filed her lawsuit in December, some 28 months after prosecutors declined to charge her.

In March, a motion was filed to have the lawsuit dismissed, with Attorney General Dana Nessel's office arguing that the whole thing was "a scant nine paragraphs" and that Kue had

not overcome governmental and qualified immunity hurdles that protect them.

In mid-May, Kue switched attorneys, bringing Nyeholt on to represent her.

Soon he'll have his chance to make the case to a federal judge that the lawsuit should proceed.

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