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To Tolerate No Harm: Medical Documentation of Excessive Use of Force by Police

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Abstract

Over the past year, the death of George Floyd and the recent shooting of Jacob Blake, among countless others, by police have ignited massive protests against systemic racism and police brutality. Numerous instances of excessive use of force by law enforcement against protestors started conversations about the role of police in our communities. Police brutality, especially against minorities, is a well-discussed phenomenon and yet the medical documentation of such events is often rare or inaccurate. Hospital personnel, especially physicians, need to document these instances to help create a public record of excessive use of force by police. By crafting a framework in the medical ethics concept of justice, physicians can begin training to report police brutality when it appears in their emergency departments and help to eliminate one facet of systemic racism.

This year has been marked by multiple incidents of police brutality against Black Americans, and the protests that have followed have been quite unlike those seen in decades. This August, we witnessed the video of Jacob Blake, shot at least seven times in the back by Kenosha police. We learned that in the hospital, even while Mr. Blake was paralyzed from the waist down, police had him restrained to his hospital bed. Earlier this year, a video of a Minneapolis police officer, Derek Chauvin, kneeling on the neck of George Floyd stunned the nation. Strangely, an initial press release of Floyd's autopsy by the medical examiner's office "revealed no physical findings that support a diagnosis of traumatic asphyxia or strangulation," leading to public outcry at a perceived attempt to cover up an obvious case of excessive use of force by the law enforcement (Donaghue, 2020). Though the release of the full autopsy clarified what the medical examiner had found, the backlash was swift as medical examiners have been routinely accused of turning a blind eye towards deaths caused by law enforcement (Singh, 2020).
Unfortunately, there are many instances in which physicians could bring attention to trauma inflicted by police, where they instead choose to remain silent. Physicians must begin the process of establishing protocols to report incidents of police brutality and police-caused homicide, and

though there will be pushback from law enforcement groups as well as other physicians, these changes must be made to ensure safety for more Americans.

The video of the police interaction with George Floyd shows that when paramedics arrive on scene, Chauvin still has his knee on Floyd's neck, and continues to keep his knee on Floyd's neck for several minutes (Sawyer, 2020). When the paramedics filed their report, they never mention that they witnessed Chauvin on top of Floyd when they arrived, though they mention that bystanders were heard claiming the police had killed him (French, 2020). The paramedics' initial assessment of the incident not including what they witnessed is the first of many major errors. Then, the prosecutor's office released a segment of the autopsy conducted by the Hennepin County Medical Examiner, which stated "no physical findings that support a diagnosis of traumatic asphyxia or strangulation" but also mentioned a myriad of factors that may have contributed to Floyd's death, such as poor cardiovascular health and recent methamphetamine use. These things taken in combination make it appear that the Hennepin County Medical Examiner, both a physician and a government employee, was knowingly obfuscating the role of law enforcement in Floyd's death (Crawford-Roberts et al., 2020). The autopsy report done by the medical examiner would in fact state that the cause of death of George Floyd was a homicide, however the perception of a cover-up by a physician on behalf of law enforcement would be difficult to dislodge from the collective psyche. On June 2nd, after the full autopsy had been released, the Washington Post ran an opinion titled, "Want police reform? We need independent medical examiners and coroners" (Feldman, 2020). One key point of contention raised by the article was the appearance of conflicts of interests when medical examiners perform the roles of physicians while being employed by the government, and in some states with no requirement that the medical examiner actually be a physician, a law enforcement officer like a sheriff may holds both roles simultaneously. These are rather blatant examples where legislation or regulatory action can be taken to prevent scenarios like this from occurring.

In that article, there was also one other key contention: medical professionals were not correctly reporting abuses carried out by law enforcement, including what appeared to be homicide at the hands of police. In the study the article cited, medical examiners only correctly identified 24 out of a total 71 cases where an individual in police custody had died due to use of force by law enforcement (Feldman, 2020). In the study, all 71 cases were those of individuals who had been either subject to Taser shock, a chokehold or other restraint method, or been denied water while in detention, and proceeded to die in police custody. Yet, in over half of the cases, physicians attributed the cause of death to accidental injuries or mental illness, and almost never mentioning police involvement. Many times, medical examiners and coroners will highlight pre-existing conditions or the findings of

toxicology screens that divert attention away from the immediate cause of death instead. For example, the autopsy of Eric Garner heavily focused on his asthma and obesity, even though it had come to the conclusion that his death was a homicide. The autopsy of Alex Nieto documents years of his mental health struggles and medication history, even though comparatively less attention was given to the fact he had been shot 59 times. (Singh, 2020).

Emergency department physicians have also played a large role in diminishing the impact of police brutality by failing to consistently file reports of excessive use of force. In one study, researchers found that less than 10% of individuals who were being treated for injuries sustained due to police actions were documented to have complained of excessive use of force. The same study noted that only 42% of cases included any suggestion in the patient chart that the patient may have been subjected to force by the police (Strote & Hickman, 2018). A national survey of emergency department physicians found as many as 70% had seen cases with evidence of police brutality but had failed to report them (Hutson et al., 2009). This failure of physicians to report incidences of police brutality only perpetuates the problem. One study noted that the FBI indicates there are approximately 400 police-involved homicides a year, but most independent experts believe the number is likely closer to 1000 (Richardson et al., 2016). These discrepancies point to a larger issue: police departments are not keeping proper documentation of injuries or deaths that are occurring in their custody or as a result of their actions. If physicians were able to properly keep track of police-involved homicides and report them in a way that maintains patient confidentiality, this would make it easier to identify the scope of the issue of police brutality without having to rely on law enforcement statistics.

While law enforcement and medical professionals can work together to achieve some common objectives, in other instances physicians have had to stand up against law enforcement. Physicians have rightfully criticized the inability to provide treatment to individuals needing medical care in jails and prisons. One survey found that more than 2 out of 3 inmates in jail had never received a single medical exam, even though they are at greater risk for infections (Sundarajan et al., 2012). Another example of a conflict stems from incidents like one in Utah in 2017 where a nurse was arrested when she would not allow a police officer to draw blood from an unconscious patient seeing as the officer lacked a warrant. Due to the incident being caught on video the officer was fired, and the hospital set up a new policy that banned law enforcement from engaging in investigations within patient care areas of the hospital system. (Barbash, 2017). Given that physicians have the ability to make positive changes to protect the rights of patients in other settings, it is important that they take a stand in addressing the impact of excessive police force and systemic racism. While there have been calls for physicians to document evidence of police brutality in the past, to this point in time there have been no major policy

changes and no training for physicians to identify excessive use of force (Strote & Hickman, 2018).

Those who argue that physicians should develop better protocols for identifying and reporting evidence of police brutality argue that the medical profession has historically lagged behind in identifying and addressing other areas of abuse that we now have mandatory reporting for, including child and elder abuse. In many respects, a better system for physician identification of law enforcement abuse is already overdue (Hutson et al., 2009). These proposals have been met with some resistance, however. When this proposal was first formulated, one physician argued against physician documentation of excessive force by noting "emergency physicians seldom, if ever, possess the information necessary to judge the appropriateness of that force," and that physicians would likely bring no useful information to the fold even if they were tasked with this documentation (Ford, 2009). The law also makes a very clear distinction between the types of abuse that physicians are currently mandated to report (spousal, child, or elder abuse) and police abuse, with the author noting that police use of force is almost always considered legally justifiable. Critics may also argue that physicians have no legal standing by which they can address excessive use of force by police, and this would weaken the logic for documentation (Strote & Hickman, 2018). Federal legislation that would mandate medical personnel document police brutality is not only unlikely to pass but would also require the formation of additional hospital-based violence intervention programs, of which there are currently only 30 in the entire nation (Richardson et al., 2016). It is important that if a legal mandate for medical documentation of excessive use of police force is to succeed, the attitudes of many in the profession will have to change, as many have expressed an uneasiness with the prospect of collecting data that would be used against police. For example, common responses from trauma staff about their hesitance noted that documentation would not do anything to advance the care of the patient, that staff would be forced into being court witnesses or be served subpoenas, and that the information would be unstandardized and/or unreliable. One other critique was that documentation of police use of excessive force would go beyond the mission of a hospital (Richardson et al., 2016). I would argue it is completely in accordance with the mission of medical professionals that they be engaged in documentation efforts of police brutality.

The goal of medical professionals is to provide healing or care for the sick. In order to provide the best quality of care, physicians often utilize the four major pillars of medical ethics: autonomy, beneficence, non-maleficence, and justice. The pillar of justice in medical ethics requires that physicians distribute the benefits and risks of their care in an equitable manner (Beauchamp, 1999). In response to the recent spate of shootings by the police and evidence of police brutality against protestors, the American Medical Association (AMA) released a statement

titled "Police brutality must stop." In that statement from AMA leadership, it says, "in any season, police violence is an injustice" and that "corporeal and psychological violence at the hands of police is a derogatory device of enforcement, which is a philosophy our AMA cannot abide" (Ehrenfeld & Harris, 2020). The language from the AMA suggests that tackling issues of police brutality is within the scope of a physician's obligations to upholding justice. In that statement, the AMA leadership writes, "excessive police force is a communal violence that significantly drives unnecessary and costly injury, and premature morbidity and death" (Ehrenfeld & Harris, 2020). In this way, the AMA has merged the conversation on police brutality with that public health. Public health tackles the question of fair allocation of medical resources and treatment among various ill or unhealthy populations, much of whom are disadvantaged, and so at its core public health is rooted in justice. By framing police brutality as a public health issue, this should open up the discussion for better documentation of excessive force used by law enforcement. Public health has always relied on epidemiologic data, with an analysis of how disease occurs and how they should be managed. There currently is a lack of data on police brutality and therefore an inability to properly find solutions for it. A step in the right direction would be for hospitals to properly record instances where patients report of mistreatment by the police and release summaries of that data to the public (Richardson et al., 2016).

An effort by medical professionals to document cases of excessive use of force by police would show, at the very least, that the field of medicine views individuals unjustly targeted by police as a disadvantaged population deserving a fair share of medical treatment. If we agree this is true, then there are uncomfortable questions we must ask and try to answer. If justice involves a fair distribution of medical treatment that is meant to benefit the common good but especially the disadvantaged, then individuals in police custody or those injured by police are entitled to equal medical care. Those who are injured or killed by law enforcement should have the same right to have their cause of trauma be accurately recorded in the same way their injuries or cause of death would be reported by any other means. If none of these things can be done, then physicians must explain why they are not able to provide care for these individuals at the very least. Physicians have always played multiple roles: being caregivers is a large component of their job, but they need to be advocates for patients and use their voices to amplify concerns of those they treat. Physicians must acknowledge instances of excessive use of force by the police and accurately report them to the public. If one of the goals of medicine is to do no harm, it cannot tolerate any form of harm. The first step then is to acknowledge that harm is occurring.

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