

Department of
Veterans Affairs

Memorandum

Date: January 12, 2009

From: Administrative Investigation Board

Subj: Report of Investigation into Allegation of Excessive Police Force and/or Patient Abuse

To: Director, Durham VA Medical Center (00)
THRU: Chief, Quality Management Service (11B)

1. **Scope:** This investigation was convened to inquire into the facts and circumstances surrounding an allegation of excessive police force and/or patient abuse.

- a. Was the identified patient abused?
- b. If the patient was abused, what constituted the abuse?
- c. If abuse was found, who was involved in the abuse?
- d. Was excessive police force used during the police intervention with the patient?
- e. If excessive police force was used, who was involved in the excessive force?
- f. If excessive police force was found, what constituted the excessive force?
- g. Were other behaviors discovered that constitute abuse or excessive police force?
- h. Who was involved in those behaviors?

2. **Findings of Fact:**

*All redactions made under
FOIA Exemption 6*

Testimony of [REDACTED]

- Claimed that Mr. [REDACTED] took a swing at him
- Told Officer [REDACTED] to pepper spray Mr. [REDACTED]
- Officer [REDACTED] then used the PR-24 to obtain voluntary compliance
- Officer [REDACTED] then kind of pushed Mr. [REDACTED] back with the PR24 into the room
- Mr. [REDACTED] was belligerent, loud, disorderly
- Could not takedown Mr. [REDACTED] because of his position in the doorway
- He and Officer [REDACTED] were trying to gain voluntary compliance and followed a continuum of force
- He received training on PMDB (Prevention and Management of Disturbed Behavior) but not sure of the date
- Police Officers have their own way to take down patients
- He is not sure how many times Officer [REDACTED] struck Mr. [REDACTED] with the PR-24
- Mr. [REDACTED] was struck in the upper right thigh to upper right arm area

- It is Officer discretion to either do a takedown or strike with the PR-24
- Given the circumstances "we acted appropriately."
- Officer [REDACTED] and Officer [REDACTED] handcuffed Mr. [REDACTED]

Testimony of [REDACTED]

- Knew [REDACTED] had a "violent history"
- He and [REDACTED] responded to a call about a disturbance in clinic Area A.
- They escorted Mr. [REDACTED] to the Emergency Care area, near isolation room
- As soon as the officers and Mr. [REDACTED] crossed over the threshold of the isolation room, Mr. [REDACTED] punched him in the side of the head, and tried to punch the [REDACTED]
- He backed up and [REDACTED] ordered him to spray Mr. [REDACTED] but "I was already going for my pepper spray at that time."
- The pepper spray apparently had zero effect on Mr. [REDACTED] so Officer [REDACTED] withdrew his PR-24
- He delivered two blows to "primary striking target on his forearm." No effect
- He then struck Mr. [REDACTED] on the wrist, then went into a modified high block and pushed Mr. [REDACTED] back into the room so we could get him in handcuffs
- Testified that he was trained to use minimum force necessary, and that this was use of minimum force
- They didn't handcuff Mr. [REDACTED] initially because it wasn't necessary as Mr. [REDACTED] was being compliant as he and [REDACTED] were escorting him
- The isolation room was the only place they had available to take him.
- Mr. [REDACTED] was put down on the floor and the door was closed, leaving Mr. [REDACTED] in the room without handcuffs
- It was a couple of minutes between handcuffing Mr. [REDACTED] and then escorting him to get his eyes flushed.
- Officer [REDACTED] was aware that he was in the ER when he used the pepper spray
- After you use the PR-24, "you would return it to it's holder"
- Officer [REDACTED] handed the PR-24 to someone else
- He didn't watch Mr. [REDACTED] the entire time Mr. [REDACTED] was in the isolation room
- He didn't want to put the PR-24 back in his holster until he knew the threat had been eliminated
- Mr. [REDACTED] struck him with a "fully closed fist" on the left side of the face
- Officer [REDACTED] went to Employee Health immediately after the incident to be evaluated
- Believes he struck Mr. [REDACTED] a total of four times; two on forearm, one on the back of his hand, and a short handled jab into his abdomen
- Mr. [REDACTED] stopped resisting after he was handcuffed

- "I honestly wish that the VA would look at a system similar to like a Taser"

Testimony of [REDACTED]

- Has been employed at DVAMC since May 2008
- [REDACTED] and Officer [REDACTED] escorted Mr. [REDACTED] to the isolation area of the ER
- Mr. [REDACTED] was asked by Officer [REDACTED] to have a seat in the isolation room
- After he was told to sit down several times "he took a fighting stance"
- Mr. [REDACTED] struck Officer [REDACTED] with a "straight punch"
- Officer [REDACTED] backed up, withdrew his OC and sprayed Mr. [REDACTED]
- Officer [REDACTED] then went for his PR-24 and struck Mr. [REDACTED] on the right forearm 2 or 3 times
- After the OC spray started taking effect, Mr. [REDACTED] backed into the isolation room, got down on his hands and knees in the fetal position, and then Officer [REDACTED] and [REDACTED] went in there and they handcuffed Mr. [REDACTED]
- Officer [REDACTED] testified that "I didn't put no handcuffs on anybody"
- Officer [REDACTED] testified that "I didn't take the weapon" (referring to the PR-24 that Officer [REDACTED] was not in possession of)
- They are not taught at the academy to use OC spray or a PR-24 to get a person to comply
- From his recent training experience, he acknowledged that the actions by Officer [REDACTED] and [REDACTED] were "maybe a little overboard"
- He reviewed the tape

Testimony of [REDACTED]

- Once he arrived at the clinic, Mr. [REDACTED] appeared to be heavily medicated and unstable; and she was frightened
- As Mr. [REDACTED] became more agitated, [REDACTED] called the police, who responded quickly
- She felt that until this incident the police were "useless" but that they handled this incident well
- The police showed up, asked [REDACTED] what the problem was, and she directed them to the nurse behind the curtain
- Mr. [REDACTED] was not cursing, it was more mumbling
- Mr. [REDACTED] approached her 6-7 times, by himself, no caregiver present

Testimony of [REDACTED]

- [REDACTED] evaluated Mr. [REDACTED] after the incident with the police
- Evaluation took place in Radiology while Mr. [REDACTED] was receiving x-ray, and in the negative flow room in the ER
- Mr. [REDACTED] was sporadically belligerent and unintelligible

- He noted point tenderness and erythema on the wrist, and lateral erythema striations, like basically redness, two or three rows of redness on the stomach from wherever
- Cannot recall if Mr. [REDACTED] was handcuffed during the evaluation
- Mr. [REDACTED] behavior during the evaluation was unpredictable; i.e. sitting there mumbling then acting up and threatening
- He was able to deescalate Mr. [REDACTED] behavior through his training
- It was his first encounter with Mr. [REDACTED] no prior knowledge

Testimony of [REDACTED]

- Mr. [REDACTED] was brought up to 9B for admission
- She was aware that Mr. [REDACTED] had been pepper sprayed by the police
- Once on 9B, Mr. [REDACTED] was given a shower and a change of clothes. He was cooperative.
- Mr. [REDACTED] was seen by Dr. [REDACTED] who was waiting for him
- [REDACTED] did a skin assessment and saw evidence that Mr. [REDACTED] had been struck in the abdomen and his hand
- Ortho came up later in the evening and put a splint on Mr. [REDACTED] gave him medication and Mr. [REDACTED] was okay after that
- Mr. [REDACTED] is the type of patient who would not take medications, and have to be put on forced medications. When he stops medications, "he comes in very unstable"
- She was surprised that the police had to use pepper spray
- Mr. [REDACTED] as tried to strike staff on 9B, but "he's not a patient that we can't control in the floor"
- Mr. [REDACTED] told her that he was hit by a policeman. Mr. [REDACTED] asked "Are you going to hit me too?" Also responded that "He hurt me, he hit me"
- Mr. [REDACTED] had two well defined abrasions or strike marks on his abdomen

Testimony of [REDACTED]

- We are in accordance with the standing basic training that you have to have at any police department nationwide
- "I'm well aware that what we need here is a training officer.."
- The use of force of the baton in this case was authorized, but he is by no means satisfied with the way this was done; the baton should've never gotten to that point
- [REDACTED] arrived on the scene of the incident at the point they were decontaminating Mr. [REDACTED]
- [REDACTED] was shocked at the act of disengagement by [REDACTED]
- "Once you lay hands on somebody, you maintain control of him and you never leave a man alone." [REDACTED] left [REDACTED] alone"
- This was not patient abuse or excess force, "but it was a failure to factually and professionally address a situation"
- The officer's action were a "judgment call"

- "We have our own training that goes beyond yours, then we have to step in"
- Replied "No, no, no" when asked if he expects his officers to use the PMDB principles
- "I consider it a bad mistake but I don't consider it patient abuse" when asked if he considered this patient abuse
- "It should have been open hand or closed hand control techniques"
- But if we had never had a breakdown, [REDACTED] would never had to went have had to go to plan B, in this case plan C
- "..if the officer would have responded properly, tactically, which I think he was trained to get those results, then it shouldn't have never gotten to the OC usage and the baton"
- "If Mr. [REDACTED] had not struck the officer, there would be no need for use of the baton or OC"
- "Excessive force is any force over the force necessary"
- At the time the officer was using the baton on Mr. [REDACTED], Mr. [REDACTED] was not compliant with a verbal command, therefore he was not subdued and was considered dangerous
- "It was not excessive force because it was necessary based upon the lack of judgment [REDACTED] had by disengaging"
- "It was a mistake" "But it was not excessive force"
- Police officers "can skip levels if you think it's necessary by judgment call"
- "We need a proper room"

Testimony of [REDACTED]

- He was told by [REDACTED] and [REDACTED] that the police had to apply significant force to a patient, and they were very concerned that he was harmed by the police
- When he went to examine Mr. [REDACTED] in the negative pressure room, Mr. [REDACTED] was seated, handcuffed
- Mr. [REDACTED] was not acting rationally
- [REDACTED] noted a swollen right hand with significant bruising, and three horizontal welts on his abdomen
- He ordered x-rays of Mr. [REDACTED] hand and determined a fracture of the second metacarpal bone of the right hand
- Mr. [REDACTED] was not hostile or threatening to Dr. [REDACTED]
- Mr. [REDACTED] was examined with handcuffs on (front)
- Mr. [REDACTED] chart showed that he had a pattern of not taking his medications and becoming violent and being brought into the hospital in an emergency state
- Mr. [REDACTED] was brought straight into that room bypassing normal procedures because of the acuity of his response

Testimony of [REDACTED]

- While working in the ER on October 28, 2008, heard a scream

- She walked over to the window at the ER side and saw Mr. [REDACTED] standing in the doorway of the reverse isolation room
- Mr. [REDACTED] was not following commands from Officer [REDACTED] to go into the room and sit down
- Officer [REDACTED] then pepper sprayed Mr. [REDACTED]
- Mr. [REDACTED] did not move, so Officer [REDACTED] pulled out his baton and struck Mr. [REDACTED] twice in the right hand
- Mr. [REDACTED] did not move so Officer [REDACTED] then struck Mr. [REDACTED] twice in the abdomen
- Mr. [REDACTED] still did not move or obey command to sit down
- Officer [REDACTED] then pushed Mr. [REDACTED] full force and he fell to the floor
- She did not see Mr. [REDACTED] strike the officers as she was not there for the full course of events
- She recalls that Mr. [REDACTED] was struck by Officer [REDACTED] 4 times, with two clear blows to the abdomen and two to the right hand/wrist area
- Eventually Mr. [REDACTED] was handcuffed and removed from the room, put in one of the corners wearing a towel or something over his face

Testimony of [REDACTED]

- Mr. [REDACTED] was escorted to the ER area by about 4 people; two police officers and 2 other people
- As they were trying to get Mr. [REDACTED] into the overflow room, Mr. [REDACTED] flinched or jumped at them, kind of scared them
- They gave Mr. [REDACTED] a command to get back in the room and he didn't respond and the uniformed officer maced him
- Mr. [REDACTED] stood there with his eyes closed after being sprayed
- The officers asked Mr. [REDACTED] to do something else; Mr. [REDACTED] stood there; the officer pulled out his baton and started hitting Mr. [REDACTED]
- The officer then pretty much tackled Mr. [REDACTED] to the ground
- [REDACTED] was seated at the ER window, then stood up to get a better view as it was escalating
- He did not see Mr. [REDACTED] take a swing or punch at either [REDACTED] or Officer [REDACTED] Mr. [REDACTED] may have raised his hand
- Recalls the officer striking Mr. [REDACTED] 5-8 times
- He does not recall seeing the officer push Mr. [REDACTED] back into the room
- He testified that the officer tackled Mr. [REDACTED] by himself
- His opinion is that the officers were embarrassed and overreacted
- When discussing the incident later there was a comment "they said Rodney Kinging him"

3. Conclusions:

a. Was the identified patient abused? Yes

b. If the patient was abused, what constituted the abuse? Use of Oleoresin Capsicum (OC) spray and PR-24 (baton) by uniformed police officer which resulted in fracture of metacarpal in right hand and bruising/abrasions on abdominal area of patient. Patient was then placed in Isolation Room, without treatment for OC spray exposure for brief period of time, approx. 5 minutes according to video.

c. If abuse was found, who was involved in the abuse? [REDACTED]

and [REDACTED]

d. Was excessive police force used during the police intervention with the patient? Yes

e. If excessive police force was used, who was involved in the excessive force? [REDACTED] and [REDACTED]

f. If excessive police force was found, what constituted the excessive force? Use of the OC Spray, PR-24 (baton) and Police intervention.

g. Were other behaviors discovered that constitute abuse or excessive police force? Yes:

- Officers' failure to follow Use of Force directive
- Officers' failure to follow Use of OC spray directive
- Officers' failure to control the scene resulted in patient abuse and excessive police force.
- Officers' failure to follow handcuffing procedures

h. Who was involved in those behaviors? [REDACTED] and [REDACTED]

i. Miscellaneous:

- Uniform Offense Report inconsistent with witness statements
- No Incident Report could be found
- Officers' testimony inconsistent with video of incident. For example, Officer [REDACTED] claims he was punched by Mr. [REDACTED], and [REDACTED] claims Mr. [REDACTED] took a swing at him during the time period captured on video in the ER - but the video does not support the officers' contention that Mr. [REDACTED] punched Officer [REDACTED] or that Mr. [REDACTED] took a swing at [REDACTED]
- In a memo dated October 29, 2008, and sent to Director, LETC, VISN 6 Lead Police Chief, Medical Center Director, and Associate Director, [REDACTED] determined that the officers' actions were justified and in accordance with the use of force continuum. However the Board feels that this determination and correspondence reflected poor judgment by [REDACTED]

4. Recommendations:

- a. Establish one (1) FTEE Training Officer for Police Service
- b. Establish a Process Action Team (PAT) to examine existing training opportunities for management of aggressive/disturbed behavior for all staff including Police Officers
- c. Establish an appropriate Holding Area for disturbed/disruptive patients in Outpatient/ER area.
- d. Appropriate disciplinary or other administrative action should be taken with respect to the excessive use of force and patient abuse by Officer [redacted] and [redacted]
- e. In a memo dated October 29, 2008, [redacted] condoned the actions of [redacted] and [redacted]. Appropriate disciplinary or other administrative action should be taken concerning [redacted] condoning of the actions of [redacted] and [redacted] regarding Mr. [redacted] on October 28, 2008.