
IN RE:	**:**	**CITY OF PHILADELPHIA**
WILLIAM DeSILVIS	**:**	**POLICE ADVISORY COMMISSION**
	:	**Complaint No. 980471**

Before: P.Uyehara, J.Savitt & Rev.R.Shine, Commissioners
Counsel: John Ehmann, Esquire

O P I N I O N

I. INTRODUCTION

On August 13, 1998, Mr. William DeSilvis filed a timely complaint with the Police Advisory Commission alleging inadequate medical care as well as an incident of physical abuse that occurred on June 4 & 5,1998, while he was in police custody. More specifically, Mr. DeSilvis, who is diabetic, complained that the police failed to assure that he received all of the insulin injections that were essential to his health subsequent to his arrest. In addition, he alleged that a Police Officer physically abused him by stabbing him in his hand with a pen following a visit to the hospital. Following review by the Commission's Investigatory Review Committee of the staff's field investigation, Mr. DeSilvis' complaint was zoned for a hearing. Testimony and other evidence were presented to a Commission Hearing Panel on February 17, 2000.

As a result of its investigation, the Commission finds that there is insufficient evidence, based on the Commission's preponderance of evidence standard, to sustain the complainant's allegations of physical abuse. The Commission does find however that the delivery of necessary medical care was mishandled; that the training provided to the Officers involved in this matter was insufficient; and that the Police Department's directives and procedures relative to the care and handling of diabetic prisoners (and possibly other types of prisoners with illnesses) are inadequate.

The Commission considered and approved the Hearing Panel's Report, as amended, on May 10, 2001.

II. EVIDENCE

The Panel heard sworn testimony from the complainant and three Police Officers. The Panel also reviewed the complaint filed by Mr. DeSilvis; statements from witnesses taken by Commission and/or Internal Affairs Division investigators; relevant hospital records; police logs and other documents.

At about 6 a.m. on June 4, 1998, Mr. William DeSilvis was arrested at his home by Detective Bridgette Durso (Badge #978), and taken to the Northeast Detective Division for questioning. Mr. DeSilvis was arrested after his sister had complained to the police that he had forged her name on applications for cellular phone service, and a credit card. Upon his arrest, the arresting Detective would not allow Mr. DeSilvis to take his insulin kit with him. Mr. DeSilvis was charged with several crimes, including forgery. Following questioning by detectives, Mr. DeSilvis was processed for arrest. Police personnel completed a medical checklist concerning Mr. DeSilvis that correctly noted that he was diabetic and taking medication.

Mr. DeSilvis during his hearing testimony explained that he is insulin dependent; that he needed to inject himself with insulin twice a day, once in the morning, and once again in the evening. He further testified that if he misses an injection, his blood sugar level rises, and he begins to feel ill. The more time that passes without his insulin injection, the sicker he becomes, and the longer it takes to restore the proper sugar and insulin levels when treatment resumes. If left untreated for a sufficient period of time, he would become comatose, and eventually die.

According to his Commission complaint, Mr. DeSilvis should have received five injections while in custody, but received only two. When he testified before the Panel, he stated that his last injection before the arrest was at about 6 p.m. on June 3rd. He

stated that he did not receive his first injection while in custody on June 4th until about 5 or 6 p.m. However, Mr. DeSilvis also acknowledged during his testimony that he may have received earlier treatment on June 4th , but that would have to be reflected on a hospital record. He also recalled receiving an insulin injection on the morning of June 5th.

Mr. DeSilvis' initial treatment while in custody was at Frankford Hospital. Mr. DeSilvis testified that he was taken by police officers to a hospital on three occasions, and received insulin during two of the three visits. As he recalled being released late on the night on June 5th, perhaps between 11 p.m. and midnight, he should have received four injections.

On June 4th, according to the complainant, a black female Officer and a white male Officer transported him to a hospital other than Frankford. There, hospital staff told him he had to sign a form in order to receive medical treatment. However, inasmuch as he had been charged with forgery, and believing that his signature could be used as evidence against him, Mr. DeSilvis refused in front of the two Officers, subsequently identified as Police Officers Thomas O'Neill and Rodney Hunt, to sign the hospital release form:.

The Officers then took Mr. DeSilvis outside to a patrol wagon where according to his testimony, Mr. DeSilvis was given a pen by the white police officer and instructed to sign a PD75-48 form to verify that he had declined treatment. Again, Mr. DeSilvis refused to sign whereupon the Officer then punctured his palm with the pen. Mr. DeSilvis then decided that he should sign. Mr. DeSilvis further testified that as the Officer thereafter was placing him in the patrol wagon, he was shoved causing his shin to scrape against the bumper of the van resulting in an abrasion and bleeding.

Mr. DeSilvis did not report his injuries to medical personnel during subsequent hospital visits. He testified that he feared reprisals from the police if he had made the

complaint in their presence. Mr. DeSilvis during the hearing did submit a photograph to document the injuries to his hand and shin.

The Panel reviewed all available medical records. The records showed that Mr. DeSilvis was first provided insulin at Frankford Hospital at approximately 9 a.m. on June 4th. He also received insulin at the same location at about 9 a.m., and again at 1 p.m. on June 5th. Frankford Hospital did not require that Mr. DeSilvis sign any forms or documents in order to receive medical treatment. Unfortunately, no records were presented that clearly documented the time of Mr. DeSilvis' release from custody.

Police Officer Thomas O'Neill (Badge #2735), a white male, testified at the hearing that he had no recollection of the alleged incident. He did acknowledge that records showed that he was on duty on June 4, 1998 together with his partner, P.O. Rodney Hunt, working the evening shift in Patrol Wagon #201. He further verified that he and his partner had indeed transported Mr. DeSilvis to JFK Hospital, and that JFK Hospital does require patients to sign forms in order to be treated. Officer O'Neill denied any mistreatment of Mr. DeSilvis.

P.O. Rodney Hunt (Badge #5134), a male African-American, also testified at the hearing. He, like his partner Officer O'Neill, could not remember any facts about the incident. He did testify that at the time of the alleged incident his head was shaven. Both Officers also testified as to their understanding of Departmental procedures relevant to the handling of a diabetic (ill) prisoner.

III. ANALYSIS

Mr. DeSilvis had difficulty during his testimony before the Hearing Panel. He acknowledged that he could not identify the Officers involved in the JFK Hospital incident, and that he had difficulty remembering exactly what had happened. His inability to accurately recall and explain the incidents was apparent. He was unsure of his dates and times. His recollections about when and how many times he received

insulin were not consistent with the hospital records. He recalled that the Officers who transported him to JFK Hospital were a male-female pair, yet other evidence made it clear that two male Officers had performed the task. While it may be that Mr. DeSilvis could have made an honest error as to the gender of one of the Officers, the misidentification, particularly in view of the testimony that one of the Officers had his head shaven at the time, certainly did not bolster his credibility,.

The photograph that Mr. DeSilvis presented to prove his injuries was taken from so far away (in terms of distance) that the supposed injuries to his palm and shin were not visible in good detail. The framing of the picture instead of helping to clarify served only to raise questions about what might, or might not have been visible in close-up shots.

This is not meant to suggest that the complainant presented false testimony. However, his poor ability to recount what happened to him, or to present it consistently with the medical records, or his prior statements, does not provide a foundation to support his physical abuse allegations. The Commission therefore concludes that there is insufficient evidence to support a finding that a police officer stabbed Mr. DeSilvis in the hand with a pen. Similarly, there is insufficient evidence to support a finding that a police officer shoved him into the patrol wagon causing injury to his shin. Both findings are based on the Commission's preponderance of the evidence standard.

The Commission further finds that the evidence establishes that the police did transport Mr. DeSilvis to a hospital for treatment of his diabetic condition on at least four separate occasions during the two days he was in custody, a frequency that appears to minimally comport with the schedule of insulin injections he needed. On the other hand, the fourth hospital trip appears to have been scheduled too soon after the third - he was treated at 9 a.m. and then again at 1 p.m. There was no explanation offered as to why the fourth visit was scheduled so soon after the previous visit. It would appear that the fourth treatment should have been administered in the late afternoon or early evening.

The Commission also finds that the Police Department's procedures for handling prisoners who refuse, or are denied medical treatment are inadequate. Moreover, the Officers' inaction following Mr. DeSilvis' refusal to sign the JFK Hospital Release Form is quite troubling, and indicates a need for Departmental evaluation of its procedures and directives relative to the medical treatment of detainees. When the JFK staff declined to treat this patient because of his refusal to sign the waiver, the Police Officers apparently felt at the time that no further action on their part was needed other than to note Mr. DeSilvis' refusal to sign the JFK form in their logs. They did not request that a doctor or nurse evaluate Mr. DeSilvis' condition, or inform him of the medical consequences of his decision. They simply transported him back to the cell at the District, and made no attempt to alert anyone at the District of the prisoner's continuing medical condition. Even upon reflection during the hearing, both Officers felt they had discharged their duties properly in taking no further action[1]. Yet, the Commission is

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1 **Officer O'Neill testified as follows:**

Q: If a patient refuses - a prisoner refuses to sign at JFK but makes a request to go to Frankford to get treatment and alleges that he won't have to sign at Frankford, is your job done once he refuses to sign at JFK?

A: Once he's refused hospital treatment, my job is done.

Q: If that situation arises, do you make any report to your supervisor that a request has been made to go to a different hospital?

A: No. (Hearing Transcript, p. 94.)

Officer Hunt testified as follows:

Q: ...And so if he goes into a diabetic shock, or becomes reactionary to low blood sugar, then what? I mean, what responsibility would you have here?

A: My responsibility is over when - after I deliver him back to the cell room. I did my job; I took him to the hospital; he refused treatment; I got his signature; I take him back to the cell room. That's the end of my responsibility. He's not my prisoner. (Hearing Transcript, p. 147.)

unable to find that the target police officers violated established Departmental policy or practice in their handling of the situation.

The Hearing Panel's review of Police Department directives, for example, Directives 82 and 128, regarding treatment of ill prisoners found that there is no procedure to handle a situation such as this when a prisoner who is in need of, and desires medical treatment refuses to sign an administrative form required by the medical provider in order to obtain the treatment. Merely returning Mr. DeSilvis, or any similarly situated prisoner, to detention is not satisfactory for any of the parties concerned.

The Commission believes that a better practice would have been to have Mr. DeSilvis examined by a doctor or other medical personnel so that a *medical* decision could have been made, and documented as to the hospital's declination to treat a willing patient in need of treatment because of the patient's refusal to sign a waiver or other form. Medical personnel could also have spoken with the Mr. DeSilvis, and insured that he understood the consequences of his decision. A medical consultation/decision under these circumstances could also provide useful information to guide officers and the Department as to any actions needed thereafter to protect the patient's health and life while he or she remains in custody.

And if a prisoner does not ultimately receive the necessary medical treatment, upon that prisoner's return to detention, appropriate police personnel, including but not limited to the turnkey, should be formally notified both of the prisoner's failure to receive medical care, and of the prisoner's current medical condition. Appropriate personnel should then be required to initiate formal procedures to monitor the prisoner for signs of distress. None of this happened with Mr. DeSilvis.

Moreover in this case, the problem was exacerbated by the police officers' apparent lack of understanding regarding diabetes, and the importance of regular treatment for insulin dependent diabetics. Both Officers stated that they had received

minimal training about diabetes and/or the handling of diabetic prisoners. Neither Officer seemed to have any knowledge of the consequences of permitting a diabetic prisoner to go untreated for an extended time period. Nor did the Officers have any demonstrated awareness of Departmental directives or memoranda relevant to the treatment of diabetic prisoners.

There is also no indication that anyone else responsible for the prisoner took any action to try to obtain the needed treatment for Mr. DeSilvis. This inattention to a potentially serious medical crisis is underscored by the fact that Mr. DeSilvis received his insulin injection at Frankford Hospital without having to sign any papers, and that seemingly there was no reason why he could not have again been transported there, as opposed to JFK Hospital, for his required treatment.

The Police Department is responsible for the medical care of individuals taken into custody. Prisoners lose the freedom, among other lost freedoms and privileges, to access medical care. The Police Department for what may be very good reasons does not, and will not permit a prisoner to access his/her own medicines. When insulin dependant diabetics are detained or arrested, the Department assumes responsibility for assuring that they will receive their insulin as needed.

The manner in which Mr. DeSilvis was handled suggests that he could well have remained untreated possibility to the point of unconsciousness, coma or worse. The fact that the potential medical crisis may have been in part the result of Mr. DeSilvis' own action (or omission) does not relieve the Department of its responsibility. Without proper and sufficient training, the Officers in this case could not be relied upon, and should not be relied upon to know when a diabetic prisoner is experiencing a life threatening condition, or simply taking a nap.

IV. CONCLUSIONS AND RECOMMENDATIONS

There is insufficient evidence to support a finding that either Officer Hunt or Officer O'Neill physically abused Mr. DeSilvis after he refused to sign the PD75-48. The Commission also finds that the police transported Mr. DeSilvis for medical treatments on four occasions during the two days that he was in custody. The number of treatments appears adequate. On the other hand, the fourth hospital trip appears to have been scheduled too soon after the third without any apparent cause or reason. The Commission also finds that the Officers herein had insufficient knowledge about the handling and treatment required by prisoners who are insulin dependent.

These Officers should receive immediate additional training on the subject of diabetes and the handling of diabetic prisoners. The Police Department should review its training regimen, in consultation with outside experts, to determine if it is adequate to assure that Officers understand the importance of tending to the medical needs of ill prisoners, including insulin dependent diabetics. The Commission finds it essential that all police personnel be properly trained in this area both at the initial stages of training at the Police Academy (College), and on a continuing basis.

The Commission also concludes that the existing Directives on these subjects are inadequate at least inasmuch as they fail to provide a protocol for assuring that necessary medical treatment requested by a prisoner is provided even when as in the DeSilvis case a medical provider refuses treatment on non-medical grounds. The protocols must also include procedures to assure that transporting police officers provide notice of the prisoner's non-receipt of medical care to appropriate personnel, and that medically appropriate supervision is thereafter provided as necessary until any danger to a prisoner's health or life ceases to exist.

The Commission recommends that the Police Department initiate a review of all relevant Directives in consultation with medical experts, and advocates concerned with the issue so that this, or any other oversight in procedure or policy can be promptly corrected. Without such improvements and corrections, the Commission believes it is

indeed foreseeable that some number of insulin dependent diabetics, or other ill patients, in police custody could suffer either serious and/or permanent medical damage, or perhaps death.

V. CLOSING

This Opinion represents the final action of the Police Advisory Commission regarding the complaint of Mr. William DeSilvis. Upon publication of this Opinion, this matter will be deemed closed.

Pursuant to the Commission's Executive Order, and established procedure, initial release of this Opinion will be to the Mayor, the City Managing Director, and the Police Commissioner with a simultaneous mailing of the Opinion to the complainant. Public release of the Opinion will be no sooner than three (3) working days after delivery to the Mayor, et al. The Police Commissioner has 30 days to submit a response to the Commission's findings and recommendations.