

**Ethical Issues in the  
Health Care Professional/Law  
Enforcement Relationship:  
Reflections from Emergency Medicine**

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**Health Care Professionals and Law  
Enforcement: Objectives**

- Describe ethical and legal obligations to patients that derive from the professional-patient relationship.
- Identify types of requests that law enforcement may make of health care professionals
- Analyze and categorize those requests that ethically should be complied with and how to accommodate them
- Identify those requests that might conflict with ethical obligations to the patient and how to analyze them
- Describe best practices for a) respectfully communicating decisions not to comply with requests based on policy, law and ethics, b) preventing miscommunication and 3) accurately documenting communications and interactions.

**Case**

- Man seen running, did not stop, apparently swallowed baggie of cocaine.
- Arrested, taken to hospital, “uncooperative.”
- Told officer he had swallowed 8 “dime bags” of drugs.
- Affidavit made, circuit judge signs a warrant to “pump patient’s stomach” to obtain the evidence.
- Should the ED physician attempt to obtain the evidence?  
– Vielmetti B. Milwaukee Journal Sentinel. Aug. 13, 2013.

**Law Enforcement and  
Health Care Providers**

- Health care professionals generally have a respectful, and at times friendly, attitude toward law enforcement.
- Feel we are on the same team as the police when we’re treating victims of crime
- Law enforcement may be called to protect us from people who seek to harm us in the hospital.

Derse AR. Health Care Professionals and Law Enforcement. N Engl J Med. 2017; 377(26):2515-2517.

## Law Enforcement and Health Care Providers

- **Conflicts may arise when law enforcement officers**
  - prevent health care providers from having confidential discussions with patients,
  - restrain patients in way that severely and inappropriately impedes examination and treatment,
  - or demand that health care personnel draw specimens from patients or retrieve evidence in an invasive manner from those who refuse or are unable to consent due to lack of decision making capacity from delirium, confusion, or unconsciousness.

Dorsey AR. Health Care Professionals and Law Enforcement. N Engl J Med. 2017; 377(26):2515-2517.

## Emergency Medicine - History

- **Resuscitation & Trauma developments**
  - Ventilation, defibrillation, CPR, ACLS
  - War experience, Flying Ambulance of Napoleon's Surgeon, "Golden Hour," ATLS
- **1940 to 1955 ER visits increased by almost 400% nationwide**
  - Ernest Shortliffe E. The Emergency Room and the Changing Pattern of Medical Care New Eng. J. Med. January 2, 1958
- **1961 First Full-time Emergency Physicians**
- **1970 First Emergency Medicine Residency**
  - Emergency Medicine Milestones. ACEP.
    - <http://www.acep.org/content.aspx?id=35148>

## Emergency Medicine Environment (1)

- **Emergencies – life threatening problems, time at a premium, communication issues**
- **Usually no previous doctor-pt. relationship/ no patient choice of physician**
- **Final common pathway for all types of acute medical problems**
  - IM, Cardiac, surgery, ob/gyn, peds, psych
    - Sanders AB. Unique aspects of ethics in emergency medicine. In: Iserson KV, Sanders AB, Mathieu D, editors. Ethics in emergency medicine. 2nd edition. Tucson: Galen Press; 1995.p. 7–10.
    - Moskop JC. ASBH 2014

## Emergency Medicine Environment (2)

- **Many personnel (e.g. EMS, paramedics, police), open environment, privacy issues**
- **Crowding issues**
- **Legal issues**
  - EMTALA (Emergency Medical Treatment and Active Labor Act)
    - Requires screening for emergency medical condition and treating or stabilizing and appropriate transfer
    - Not dependent upon insurance or other payment status

## Emergency Medicine Environment (3)

- Legal Issues (cont.)
  - Keeping confidentiality; Maintaining privacy
  - Mandatory reporting
    - Infectious disease, violence, neglect and abuse
  - Detention for mental health/ danger to self/ others
  - Patients in police custody

## Law Enforcement and EM (1)

- Emergency Physicians & Law Enforcement Agents
  - Interact more frequently than many other specialties
- Police accompany patients to:
  - Document injuries
  - Collect evidence
  - Investigate crimes
  - Accompany prisoners

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. Ann Emerg Med. 2016;68:599-607.

## Law Enforcement and EM (2)

- Police may also protect patients, staff, visitors
  - County hospitals, urban medical centers
- May be called upon to help security:
  - Restrain patients (handcuffs, other restraints)
  - Detain non-decisional patients
  - Secure weapons
  - Defuse potentially violent situations

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. Ann Emerg Med. 2016;68:599-607.

## Ethical Issues

- EPs have duty to patients and to public health
  - Mandatory and permissive reporting of diseases and dangers
  - Assistance in public safety functions
    - E.g. request for evidence collection in sexual assault: victim
- What are the duties and boundaries?

## EP's Public Safety Duties (1)

- **Mandatory/Permissive reporting of violence caused injuries**
  - Required reporting of child abuse
  - Mandatory/permissive reporting of elder abuse
  - Encouragement of victim to report partner abuse
  - Reporting of wounds caused by gunshot/ other crimes
- **Mandatory reporting of violence used for both preventive AND punitive purposes**
- **Danger to 3rd Parties – Duty to Warn/ Protect**
  - Tarasoff (Calif. 1976)

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. *Ann Emerg Med.* 2016;68:599-607.

**Table.** Mandatory reporting laws.\*

Clinical Issue	State Laws
Child abuse	All 50 states require reporting <sup>28,29</sup>
Elder abuse	At least 42 states require reporting
Injuries from weapons	At least 41 states require reporting
Injuries from crimes	At least 23 states require reporting
Domestic violence	At least 7 states require reporting
Driving impairment	At least 6 states require reporting
Alcohol-impaired motor vehicle crash	At least 6 states require reporting
Seizure	At least 6 states require reporting <sup>30</sup>
Communicable diseases	Federal law and all state laws require reporting of certain communicable diseases; exact conditions and time frames vary by state <sup>31</sup>
Animal bites	Most states require reporting <sup>32</sup>

\*This table provides sample information; it is not intended to be comprehensive. There is significant variation in state law about reporting, specific conditions, time frame, and reporting bodies. We recommend that physicians and other clinicians become familiar with mandatory reporting laws in states in which they practice.

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. *Ann Emerg Med.* 2016;68:599-607.

## EP's Public Safety Duties (2)

- **Preservation and Collection of Physical Evidence**
- **Disclosure of Medical Information regarding possible criminal acts**
  - From victims
  - From alleged perpetrators
- **Includes blood tests, physical evidence (e.g. photos of injuries, collection of ballistic evidence and clothing)**

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. *Ann Emerg Med.* 2016;68:599-607.

## Safety vs. Treatment

- **1. Restraints**
- **2. Physical Privacy**
- **3. Confidentiality**
  - HIPAA
  - State Laws
  - Intrusion
  - Photographs/Voice & Video Recording
  - Informational Privacy

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. *Ann Emerg Med.* 2016;68:599-607.

## Restraints

- Patient is a danger to self or others
  - E.g. dementia and elopement
- Method of restraint should be least restrictive necessary
  - Level of force in restraint

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. Ann Emerg Med. 2016;68:599-607.

## Physical Privacy

- Privacy as physical sphere with which others may not intrude
  - Includes modesty, i.e. privacy of part of the body
  - Expectation of no unnecessary physical contact or exposure
- When necessary, presence of law enforcement or security officials without patient consent to protect others
  - Guards of same gender, chaperone

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. Ann Emerg Med. 2016;68:599-607.

## Confidentiality

- Expectation that the information conveyed to a medical professional will not be disclosed without patient's permission

## Criminals/Suspects/Prisoners

- Criminals
  - Convicted of a crime under the law
- Suspect
  - Person thought to have committed a crime
  - May be in custody
- Prisoner
  - Deprived of liberty & in custody
    - Either criminal or non-criminal reasons

Baker EF, Geiderman J, Marco CA, Moskop JC, Iserson KV, Derse AR. Law enforcement and emergency medicine: An ethical analysis. Ann Emerg Med. 2016;68:599-607.

### **Patients in Custody**

- **Right to Informed Consent (and Informed Refusal) of medical interventions**
  - (exceptions: emergency, therapeutic waiver)
- **Right to Privacy & Confidentiality**
- **Exceptions**
  - Statute or court order mandates otherwise
  - E.g. laws that require EPs to obtain specimens/ tests for drugs, alcohol

### **Evidentiary Specimen Draws & the Law**

- Whether a patient may have a specimen drawn without consent for evidentiary purposes of law enforcement, and whether health care personnel are obligated to assist in obtaining that specimen are regulated by federal and varying state law.

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### **Specimens without Consent**

- Routine blood samples drawn without specific consent (& extra)
- Legal mandates to draw a specimen
- Court order to obtain a specific type of specimen (e.g. drug packet, bullet)

### **e.g. Test for Intoxication - Who Should Draw**

- ... (b) Blood may be withdrawn from the person arrested ... to determine the presence or quantity of alcohol, a controlled substance, a controlled substance analog, or any other drug, or any combination of alcohol, controlled substance, controlled substance analog, and any other drug in the blood only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician.
- (c) A person acting under par. (b), the employer of any such person, and any hospital, health care

### e.g. Test for Intoxication - Immunity

- ... (c) A person acting under par. (b), the employer of any such person and any hospital where blood is withdrawn by any such person have immunity from civil or criminal liability under s. 895.53.
  - Wis. Stat. 343.305 (5) ADMINISTERING THE TEST; ADDITIONAL TESTS.
- ... (2) Any person withdrawing blood at the request of a ... law enforcement officer ... [for specified purposes] is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.
  - Wis. Stat. 895.53 Civil and criminal liability exemption; tests for intoxication.

### Penalties for Refusing Test for Intoxication

	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense
Refusal to take test	1 year license revocation	2 year license revocation (offenses must be within 10 years of each other)	3 year license revocation (offenses must be within 10 years of each other)

#### Refusing to Take the Test

<http://dui.drivinglaws.org/resources/dui-refusal-blood-breath-urine-test/wisconsin.htm>

### California

- (a) (1) (A) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153. [...]
- (5) A person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. A person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.
  - Calif. VEHICLE CODE – VEH CHAPTER 4, Procedures [23610 - 23675] ARTICLE 1 General Provisions 23612.
  - [https://leginfo.ca.gov/pub/06\\_01\\_2016\\_0001\\_0005\\_vehicles\\_0001\\_0005\\_vehicle\\_codes\\_displaySection.xhtml?navCode=VEH&sectionNum=23612](https://leginfo.ca.gov/pub/06_01_2016_0001_0005_vehicles_0001_0005_vehicle_codes_displaySection.xhtml?navCode=VEH&sectionNum=23612)

### ED Cases re: Specimens for Evidence

- Winston v. Lee (US 1985)
- Bush v. Parkus (Tex. Ct App 2010)
- US v. Booker (US Ct App 2013)
- Miss. v. McNeely (US 2013)
- State v. Villareal (Tex. Ct App 2014)
- Birchfield v. N.D. (US 2016)

### **Winston v. Lee, 470 U.S. 753 (1985)**

- Rejected Virginia state's request to order surgery to retrieve a bullet from a patient's chest that allegedly connected patient to armed robbery
  - proposed surgery would violate respondent's right to be secure in his person
  - unreasonable search under 4th Amendment
    - [even if likely to produce evidence]
- Courts must balance private and public interests using factors including medical risks and the availability of other potential evidence

### **Joshua Bush v. David Parkus and Christus Health Southeast Texas (2010)**

- Patient, Bush, sued ED physician Dr. Parkus for medical battery and intentional infliction of emotional distress
  - Operated in October 2006 in attempt to retrieve bullet in forehead, despite patient's refusal
  - Authorized by search warrant
  - Bullet lodged in bone, unable to remove
- Trial court dismisses, appellate court upholds dismissal because should be classified as a health care liability claim that requires an expert report [of failure to adhere to standard of care].
  - Bush v. Parkus, Tex. Ct.App. 9<sup>th</sup> Dist. (Beaumont) 09-09-00060-CV. 2010.

### **US v. Booker, US Ct. App. 6<sup>th</sup> Cir. (2013) (1)**

- "In 2010, Oak Ridge, TN police stopped a car with expired tags. [Passenger], arrested based on small amount of marijuana during a later strip search in jail, police said they saw a string protruding from plaintiff's anus.
- Police took [defendant] to a hospital where emergency physician told him that if he didn't consent to a rectal exam, he would be sedated".
- Emergency physician explained to patient that there was suspicion that he had some sort of drug in his rectum and that as an emergency physician "I had to assure that he did not, and if he did, that I had to remove it because his life could be in danger."
- US v. Booker, No. 3:10-CR-44, 2010 WL 4884675, at \*5-8 (E.D. Tenn. Nov. 24, 2010); US v. Booker, No. 11-6311 (US Ct. App. 6<sup>th</sup> Cir, 2013)
- Vielmetti B, Doctor sedated, paralyzed and intubated man to remove drugs from his rectum for police. Milwaukee Journal Sentinel Aug. 26, 2013. <http://www.jsonline.com/blogs/news/221203751.html>

### **US v. Booker, US Ct. App. 6<sup>th</sup> Cir. (2013) (2)**

- "[Defendant] did not have a choice because if my suspicion was high enough to think that he had some sort of dangerous substance in his rectum, then it was my duty to get it out."
- [Defendant] refused, and ultimately was sedated, then injected with a paralyzing agent and intubated to assure he would keep breathing. Then the doctor dug out a rock of crack cocaine from [defendant's] anus."
- Defendant was convicted in federal court of possession of cocaine
- Appealed conviction on the basis of Fourth Amendment unreasonable search and seizure
  - US v. Booker, No. 3:10-CR-44, 2010 WL 4884675, at \*5-8 (E.D. Tenn. Nov. 24, 2010); US v. Booker No. 11-6311 (US Ct. App. 6<sup>th</sup> Cir, 2013)



### **US v. Booker, US Ct. App. 6<sup>th</sup> Cir. (2013) (3)**

- Federal appeals court finds “even though the doctor may have acted for entirely medical reasons, the unconsented procedure while Booker was under the control of the police officers must, in the circumstances of this case, be attributed to the state for Fourth Amendment purposes.
- Appeals court accepted possibility that unconsented removal of object might be medically necessary and appropriate, though not able to be used as evidence.
  - US v. Booker, No. 3:10-CR-44, 2010 WL 4884675, at \*5–\*8 (E.D. Tenn. Nov. 24, 2010).
  - US v. Booker No. 11-6311 (US Ct. App. 6<sup>th</sup> Cir, 2013)

### **Missouri v. McNeely, 569 U.S. 141 (2013) (1)**

- U.S. Supreme Court rules cannot draw blood from nonconsenting suspects without a search warrant or special circumstances.
  - 4<sup>th</sup> Amendment unreasonable search
- Missouri’s “exigency exception” to the warrant requirement did not apply because
  - “the natural dissipation of alcohol from the bloodstream does not always constitute an exigency justifying the warrantless taking of a blood sample”.
  - Missouri v. McNeely, 569 U.S. 141 (2013)

### **Missouri v. McNeely, 569 U.S. 141 (2013) (2)**

- When officers can reasonably obtain a warrant before having a blood sample drawn without significantly undermining the efficacy of the search, cannot draw without consent.
  - Missouri v. McNeely, 569 U.S. 141 (2013)

### **State v. Villarreal, Tex. Ct.App. 2014 (1)**

- “[A] nonconsensual search of a DWI suspect’s blood conducted pursuant to
  - mandatory blood draw and implied consent provisions in the Transportation Code,
  - when undertaken in the absence of a warrant or any applicable exception to the warrant requirement, violates the Fourth Amendment.”
- State v. Villarreal (No. PD-0306-14) Texas Court of Criminal Appeals 2014
- Gioffredi J. DWI Arrests: When Can the Police Take Your Blood Against Your Will? Dallas Bar Association. . Apr. 27, 2015.
- <https://www.dallasbar.org/book-page/dwi-arrests-when-can-police-take-your-blood-against-your-will>

### **State v. Villarreal, Tex. Ct.App. 2014 (2)**

- "...[F]or the results of a DWI blood test to be admissible, the prosecution would have the burden of showing that the suspect consented to the blood draw, that a warrant for the blood was legally obtained, or that obtaining a warrant under the circumstances would have been unreasonably burdensome due to factors specific to that particular arrest."
- State v. Villarreal (No. PD-0306-14) Texas Court of Criminal Appeals 2014
- Gioffredi J. DWI Arrests: When Can the Police Take Your Blood Against Your Will? Dallas Bar Association. Apr. 27, 2015.
- <https://www.dallasbar.org/book-page/dwi-arrests-when-can-police-take-your-blood-against-your-will>

### **Birchfield v. North Dakota 136 S.Ct. 126 (2016) (1)**

- Beyond civil penalties, North Dakota and Minnesota established criminal penalties to refuse to undergo blood alcohol testing
  - implied consent to submit to tests by state
- Held: Motorists may not be criminally punished for refusing to submit to a blood alcohol test
  - "there must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads"

### **Birchfield v. North Dakota 136 S.Ct. 126 (2016)(2)**

- "In instances where blood tests might be preferable—e.g., where substances other than alcohol impair the driver's ability to operate a car safely, or where the subject is unconscious—nothing prevents the police from seeking a warrant or from relying on the exigent circumstances exception if it applies."

### **Law Enforcement and Health Care Providers**

- September 2017 police body camera video
- Alex Wubbels, a nurse at University Hospital in Salt Lake City, Utah, caring for the victim of a motor vehicle crash that occurred while police were pursuing a different vehicle
- Detective demanded a blood sample from Wubbels' patient.

Derse AR. Health Care Professionals and Law Enforcement. N Engl J Med. 2017; 377(26):2515-2517.

## Law Enforcement and Health Care Providers

- Wubbels cited policy that permitted drawing blood specimens only when a patient
  - Was under arrest, gave consent, or when police had a warrant to obtain the evidence
    - None of which applied in this case
    - Policy had been agreed on by the hospital and the Salt Lake City Police Department
- The patient was not suspected of having violated any law

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## Law Enforcement and Health Care Providers

- Detective insisted and threatened to arrest her
- Wubbels called an administrative supervisor
  - who supported her position and told the detective he was making a “big mistake” by threatening the nurse.

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## Alex Wubbels Video

- <https://www.youtube.com/watch?v=ihQ1-LQOkns>
- [The Salt Lake Tribune](#)
- Published on Aug 31, 2017

## Law Enforcement and Health Care Providers

- Clinicians who consider demands from law enforcement officers for evidence
  - must know applicable law and institutional policy
  - must consider the demand in light of the ethical compass of their profession.

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## Health Care Providers & Specimens for Evidence – Risks

- Under some circumstances health care personnel may be liable for battery if they obtain specimens for the purposes of criminal prosecution rather than needed health care, especially if they do so in a manner that “shocks the conscience” (e.g., intubation, sedation and paralysis for rectal examination to extract evidence).

– United States v. Booker, 728 F.3d 535 (6th Cir. 2013)

Derse AR. Health Care Professionals and Law Enforcement. N Engl J Med. 2017; 377(26):2515-2517.

## Wisconsin Law re: Body Cavity Search by ED Physicians (1)

- 895.535 Civil and criminal liability exemption; body cavity search.

- (1) Any physician, physician assistant, or registered nurse licensed to practice in this state conducting a body cavity search pursuant to s. 968.255 is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.
- (2) Any employer of the person under sub. (1) or any health care facility where the search is conducted by that person has the same immunity from liability under sub. (1).

• Wis. Stat. 2016

## Wisconsin Law re: Body Cavity Search by ED Physicians (2)

- Not immune from civil liability for negligence in performance of search
- Does not require providers to perform search

– 2015 Wisconsin Act 238

## Laws Delineating Health Care Provider Compliance

- Statutes may delineate how health care personnel are to comply with requests by law enforcement.
- E.g. Health Insurance Portability and Accountability Act (HIPAA) provides for disclosure of information to law enforcement about the victim of a crime
  - when the victim is incapacitated and the health care professional believes such disclosure is in the best interests of the patient.

– 45 CFR § 164.512(f)(3)

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## PA Law Requires ED Physicians to take Blood Samples (1)

### ● § 3755. Reports by emergency room personnel.

- General rule.—If, as a result of a motor vehicle accident, the person who drove...requires medical treatment in an emergency room of a hospital and if probable cause exists to believe a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) was involved,

### ● the emergency room physician or his designee shall promptly take blood samples from those persons and transmit them within 24 hours for testing to the Department of Health ...

- Test results shall be released upon request of the person tested, his attorney, his physician or governmental officials or agencies

### ● (Dec. 15, 1982, P.L.1268, No.289, eff. 30 days; Feb. 12, 1984, P.L.53, No.12, eff. 60 days; Sept. 30, 2003, P.L.120, No.24, eff. Feb. 1, 2004); 2003 Amendment. Act 24 amended subsec. (a).; 1984 Amendment. Act 12 amended subsec. (b).; 1982 Amendment. Act 289 added section 3755

## PA Law Requires ED Physicians to take Blood Samples (2)

- (b) **Immunity from civil or criminal liability.**—No physician, nurse, or technician ... shall be civilly or criminally liable for withdrawing blood or obtaining a urine sample and reporting test results to the police pursuant to this section or for performing any other duty imposed by this section.

- **No physician**, nurse or technician or hospital employing such physician, nurse or technician **may** administratively **refuse** to perform such tests and provide the results to the police officer except as may be reasonably expected from unusual circumstances that pertain at the time of admission.

### ● (Dec. 15, 1982, P.L.1268, No.289, eff. 30 days; Feb. 12, 1984, P.L.53, No.12, eff. 60 days; Sept. 30, 2003, P.L.120, No.24, eff. Feb. 1, 2004); 2003 Amendment. Act 24 amended subsec. (a).; 1984 Amendment. Act 12 amended subsec. (b).; 1982 Amendment. Act 289 added section 3755

## Law Enforcement and Health Care Providers

### ● Clinicians' professional obligations

- Act in patient best medical interests
- Prevent harm
- Maintain confidentiality and protect privacy

### ● Law-enforcement personnel obligations

- Promotion of public safety
- Prevention and investigation of crimes

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## Law Enforcement and Health Care Providers

- When a law enforcement officer's demand for evidence does not conform to an accepted statute, policy, or ethical practice, the health care professional is faced with a choice.

- Some health care personnel — whether obligated to or not — may want to cooperate with law enforcement out of sympathy, uncertainty, or fear.

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## Law Enforcement and Health Care Providers

- But clinicians have very different professional obligations from law-enforcement personnel.
- When these obligations to the patient are threatened by a demand from a law enforcement officer that is contrary to professional ethical principles, the health care professional should object, state the reason and refuse to comply.

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## Law Enforcement and Health Care Providers

- There may be times when ethical obligations of health care professionals extend beyond objection and refusal,
  - E.g. when health care personnel witness excessive force or mistreatment of patients in police custody
  - where the response should be the immediate reporting of such events to both hospital administrative personnel and the officers' supervisors.

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## Law Enforcement and Health Care Providers

- However, health care professionals should weigh carefully the potential of physical danger to themselves when safeguarding patients.
- It is not the duty of a health care professional to protect patients' constitutional rights by physically attempting to obstruct an armed officer.

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American College of  
Emergency Physicians  
POLICY  
STATEMENT  
Law Enforcement Information  
Gathering in the Emergency  
Department

## ACEP Policy: Law Enforcement Information Gathering in the Emergency Department (1)

- The American College of Emergency Physicians (ACEP) believes that emergency physicians have a fundamental professional responsibility to protect the confidentiality of their patients' personal health information.
  - Federal and state laws, including the federal health information privacy regulations implemented under the Health Insurance Portability and Accountability Act (HIPAA), articulate and reinforce this responsibility.
- ACEP recognizes that law enforcement officials perform valuable functions in the emergency department (ED), and that one of these functions is investigation of criminal acts.
  - As part of these investigations, law enforcement officials may request personal health information gathered in the ED.
- Law Enforcement Information Gathering in the Emergency Department. ACEP. Revised June 2017.

## ACEP Policy: Law Enforcement Information Gathering in the Emergency Department (2)

- Emergency physicians may honor these requests only under the following circumstances:
  - The patient consents to release of the requested personal health information to law enforcement officers, or
  - Applicable laws or regulations mandate the reporting of the requested personal health information to law enforcement officers, or
  - Law enforcement officers produce a subpoena or other court order requiring release of the requested information to them.
- Law Enforcement Information Gathering in the Emergency Department. ACEP. Revised June 2017.

## ACEP Policy: Law Enforcement Information Gathering in the Emergency Department (3)

- Law enforcement officers may, in some situations, present search warrants or other court orders as grounds for requesting or directing that emergency physicians perform physical examinations, collect physical evidence, perform diagnostic tests, or conduct body cavity searches on ED patients who refuse these interventions.
- These situations present emergency physicians with difficult conflicts between obligations to respect patients' refusals of treatment, to promote trust in the therapeutic relationship, and to protect patients from harm, on the one hand, and obligations to obey legal authorities and to carry out socially imposed mandates to promote public health and public safety, on the other hand.
- Law Enforcement Information Gathering in the Emergency Department. ACEP. Revised June 2017.

## ACEP Policy: Law Enforcement Information Gathering in the Emergency Department (4)

- ACEP believes that emergency physicians must make considered judgments regarding which set of obligations is more compelling in these specific situations.
- Emergency physicians may conscientiously refuse to carry out or comply with legal orders that violate the rights or jeopardize the welfare of their patients, recognizing that there may be legal repercussions for these decisions.
- These repercussions may include contempt of court or malpractice claims.
- Law Enforcement Information Gathering in the Emergency Department. ACEP. Revised June 2017.

## ACEP Policy: Law Enforcement Information Gathering in the Emergency Department (5)

- In their interactions with ED patients, law enforcement officers may use video or audio recording devices. These recordings may include interaction or communication between ED patients and physicians or other ED staff only with the consent of all parties.
- Law enforcement information gathering activities in the ED should not interfere with essential patient care.
- Law Enforcement Information Gathering in the Emergency Department. ACEP. Revised June 2017.

## Law Enforcement and Health Care Providers

- When a law-enforcement officer makes a demand about a patient – whether for information, photographs, specimens or inappropriate restraints that impede diagnosis and treatment -- despite a thoughtful refusal by a health care professional on the basis of her understanding of policy and her professional obligation, and that demand is accompanied by threats, adherence to ethical principles takes more than mere knowledge of the right thing to do.
- It requires considered judgment about how best to take a stand as a professional and the virtue of moral courage.

Derse AR. Health Care Professionals and Law Enforcement. N Engl J Med. 2017; 377(26):2515-2517.

## Law Enforcement and Health Care Providers

- It is vital that we select for and foster character attributes such as judgment and moral courage in students who seek to enter the health care professions so that they can be prepared to confront the inevitable ethical challenges.
- Whether moral courage can be developed during professional education and training is uncertain, but it must be commended whenever it is witnessed.

Derse AR. Health Care Professionals and Law Enforcement. N Engl J Med. 2017; 377(26):2515-2517.

## Practical Wisdom (“Phronesis”)

- = The ART
  - of deliberating well (using the character trait of judgment)
  - to make the appropriate choice
  - and to establish the right means through a specific action
  - in order to achieve a particular moral end
- The nature of clinical judgments and other decisions in medicine (e.g. diagnosis, treatment, ethical judgments, resource allocations) require the development of practical wisdom

Jotterand F. 2019.



## Law Enforcement and Health Care Providers

- Salt Lake City and the University of Utah made a \$500,000 settlement with Ms. Wubbels in the case.
- Detective was fired.
- Patient, never suspected of a violation of the law related to the crash, died 2 months later in the hospital.

– Wamsley L. Utah Nurse Arrested For Doing Her Job Reaches \$500,000 Settlement. NPR. Nov. 1, 2017.



### **Case Follow up**

- Circuit judge signs a warrant to “pump patient’s stomach” to obtain the evidence.
- Doctors refused to do so.
- Patient admitted, observed for 5 days. No recovery of drugs or plastic bags.
- Patient later pleaded guilty to obstructing or resisting an officer. Charge of cocaine possession dropped.
  - Vielmetti B. Doctors refused to pump suspect’s stomach, despite search warrant. Milwaukee Journal Sentinel Aug. 13, 2013.

### **Health Care Professionals and Law Enforcement: Recommendations**

- When law enforcement make requests of health care professionals,
  - Analyze and categorize in light of applicable law and
    - ethical and legal obligations to patients that derive from the professional-patient relationship
  - Identify those requests that might conflict with ethical and legal obligations to the patient
    - Consider organizational guidance and institutional policy
  - Consider consultation with legal/risk management/ethics
- If plan refusal of request
  - Respectfully communicate decisions not to comply and brief rationale
  - Accurately document communications and interactions