OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

May 27, 2021

Sheriff Don Barnes
Orange County Sheriff's Department
550 N. Flower Street
Santa Ana, CA 92703

Re: Custodial Death on March 29, 2020
Death of Inmate Michael Anthony Finnerty
District Attorney Investigations Case # SA 20-009
Orange County Sheriff's Department Case # 20-011047
Orange County Crime Laboratory Case # 20-43962

Dear Sheriff Barnes,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the March 29, 2020, custodial death of 69-year-old inmate Michael Anthony Finnerty.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Michael Finnerty. In this letter, the OCDA describes the criminal investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to review the conduct of any Orange County Sheriff's Department (OCSD) personnel or any other person under the supervision of the OCSD in connection with this custodial death incident.

On March 29, 2020, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Orange County Global Medical Center, where Michael Finnerty died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed one witness, as well as obtained and reviewed reports from the OCSD and Orange County Crime Laboratory (OCCL), incident scene photographs, and other relevant materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD personnel or any other person under the supervision of the OCSD. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating custodial deaths within Orange County when an individual dies while in custody. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units.

Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, scene processing, evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. Deputy district attorneys from the Homicide, Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Senior Assistant District Attorney supervising the Operations IV Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer involved shootings and custodial death cases. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

On January 21, 2020, the San Diego Police Department (SDPD) arrested Finnerty on two outstanding Orange County warrants. On January 24, 2020, OCSD took custody of Finnerty and transported him to Orange County. Finnerty was booked into the Orange County jail on the warrants.

At approximately 8:37 a.m., an Orange County Health Care Agency (OCHCA) Registered Nurse (RN1) completed a medical screening of Finnerty. Finnerty disclosed that he had Chronic Obstructive Pulmonary Disease (COPD), incontinence, and sciatica pain. Additionally, he also disclosed he had been diagnosed with Schizophrenia and Post Traumatic Stress Disorder (PTSD). Finnerty reported that he needed an inhaler for his COPD, adult diapers for his incontinence, and a cane because of his sciatica. Finnerty stated he was currently on prescribed Gabapentin, Xopenex, Risperdal, Prazosin and Valproic. OCHA provided Finnerty with diapers and requested a chest x-ray. The x-ray showed “no abnormal results.” Finnerty was referred to medical and mental health for further evaluation. Finnerty was housed in Medical Ward, Module (Mod) O – Ward D – Bunk 23 due to his preexisting medical conditions.

At approximately 3:06 p.m. a Mental Health Practitioner (MHP) completed a psychiatric evaluation of Finnerty. The MHP ordered Finnerty to take 10/mg Prozac once a day and 0.5/mg Risperdal once a day at bedtime. On January 25, 2020, Finnerty was given a mobility exam and provided a cane. On January 31, 2020, at approximately 10:30 a.m., a Nurse Practitioner (NP) completed a follow up examination with Finnerty. Finnerty complained of bouts of diarrhea approximately three times per day. The NP recommended Finnerty drink plenty of fluids and take Imodium as needed. The NP ordered Finnerty to take 108 mcg/act Albuterol two puffs by mouth four times a day, 17 mcg/act Altrovent HFA two puffs by mouth four times a day, and 40 mcg/act Qvar RediHaler two puffs by mouth two times a day to treat his COPD.

On February 3, 2020, Finnerty submitted an “Inmate Health Message Slip” reporting a cough and low energy. On February 7, 2020, a second OCHCA Registered Nurse (RN2) treated Finnerty for those symptoms. RN2 found no evidence of pulmonary congestion and ordered Finnerty to take two doses of 100-10mg/5ml of Guaifenesin DM four times a day. On February 11, 2020, Finnerty submitted an “Inmate Health Message Slip” reporting a rash on his face. RN2 examined Finnerty and diagnosed the rash as Seborrheic Dermatitis. Hydrocortisone cream three times a day for one week was added to his medication schedule. During that visit, Finnerty told RN2 that in the past, because of his COPD, he required the use of oxygen (O2) to breathe. RN2 told Finnerty that if he began experiencing shortness of breath, he should contact medical staff. RN2 submitted a request to have Finnerty’s O2 levels checked daily. On February 13, 2020, Finnerty submitted an “Inmate Health Message Slip” for his rash. On February 14, 2020, the NP ordered Finnerty add a daily dose of 25 MCG of Vitamin D to his medication schedule.

On March 4, 2020, a Mental Health Practitioner Doctor (MHPD) conducted a psychiatric progress evaluation with Finnerty and changed his mental health medication schedule. The MHPD ordered Finnerty to take 10/mg Prozac once a day, 500/mg Divalproex once a day at bedtime, 2/mg Risperdal once a day at bedtime, 400/mg Gabapentin Oral two times a day, and 5/mg Prazosin HCI Oral once a day at bedtime.

On March 6, 2020 Finnerty appeared in Orange County Superior Court and was sentenced to 480 days in Orange County Jail. Finnerty was given a release date of April 28, 2020.

On March 8, 2020, Finnerty submitted an “Inmate Health Message Slip” regarding “bad diarrhea.” On March 9, 2020, he submitted another slip stating his medications were causing his diarrhea and he needed Imodium. On March 10, 2020, a third Registered Nurse (RN3) provided Finnerty with Bismuth Subsalicylate (Pepto Bismo) tablets for his diarrhea. RN3 directed Finnerty to take two tablets every hour, as needed, not to exceed sixteen tablets per day. On March 11, 2020, Finnerty submitted another “Inmate Health Message Slip” stating he was “feeling bad, with diarrhea.” On March 12, 2020 RN2 visited Finnerty. Finnerty told RN2, “I’m doing fine. I don’t need to be seen. I already got my meds.”

On March 13, 14, and 15, Finnerty refused to take his medications (Divalproex, Risperidone, Prazosin HCI, and Prozac) as well as his Vitamin D. On March 15, 2020, Finnerty submitted an “Inmate Health Message Slip” stating that he was not taking his medication because of “adverse reactions.” He requested to speak with a “psychiatric doctor.” On March 16, 2020 at 9:00 a.m., Finnerty refused to take his Prozac. At approximately 2:34 p.m., Mental Health Clinician (MHC) met with Finnerty. Finnerty told MHC, “I’m doing alright. I stopped taking my psych meds though. I didn’t like how they were making me feel.”

On March 18, 2020, at approximately 12:35 p.m., a fourth Registered Nurse (RN4) examined Finnerty. She noted that Finnerty weighed 149 pounds and his vital signs were normal. Finnerty told RN4 that he has had a cough for several days and has been unable to eat for three days. At approximately 1:53 p.m., NP spoke to a Mod O deputy about Finnerty. NP requested that Finnerty take a dietary supplement, “Resource 2.0” once a day for the next seven days to address his weight loss. On March 19, 2020, Finnerty submitted an “Inmate Health Message Slip” stating that he needed medical care “due to worsening condition, losing to[o] much weight.”

On March 20, 2020, at approximately 1:00 p.m., a fifth Registered Nurse (RN5) gave Finnerty 2/mg of Loperamide HCL oral - a medication used to treat diarrhea. At approximately 11:18 p.m., a Mod O deputy contacted a sixth Registered Nurse (RN6) and informed her that Finnerty was complaining of abdominal pains and stated he had experienced five to six bouts of diarrhea per day, for the last six days. The deputy told RN6 that Finnerty requested an intravenous IV and be taken to the hospital. On March 21, 2020, at approximately 12:16 a.m., RN6 examined Finnerty. Finnerty showed no signs of respiratory distress, his skin was moist, abdomen soft, strong bowel signs, and was currently taking Imodium. Finnerty was given two cups of Gatorade which he tolerated well and was scheduled for a follow-up exam with a physician.

On March 22, 2020, at approximately 8:26 a.m., an OCHCA doctor visited Finnerty. During that visit, Finnerty denied experiencing fever, chills, nausea, or vomiting. He reported having a poor appetite and stated he had been reluctant to eat due to his bouts of diarrhea. Finnerty told the doctor that he had previously been on O2 because of his COPD. After the doctor reviewed Finnerty's Veteran of Foreign Affairs (VA) medical records, he found no mention of him ever being on O2. Finnerty's blood pressure (BP) was 141/91, pulse 86, O2 saturation 88-90%. Finnerty was breathing normal and showed no acute distress or shortness of breath. The doctor recommended Finnerty resume using a metered dose inhaler and have his O2 monitored regularly. The doctor cancelled the food supplement, "Resource 2" suspecting that it caused the diarrhea. The doctor noted that if the diarrhea persisted, Finnerty should be tested for the Norovirus.

On March 23, 2020, Finnerty submitted two "Inmate Health Message Slips," one to medical and the other to mental health. He asked to see a medical doctor or nurse. He said he was very weak and unable to eat for days. He requested the dietary supplement, "Assure." His mental health slip stated that he felt anxious, depressed, and unable to relax. On March 24, 2020, at approximately 4:32 p.m., a seventh Registered Nurse (RN7) examined Finnerty. Finnerty denied experiencing shortness of breath. RN7 noted Finnerty's BP was stable, his O2 saturation was 89%, and his respirations were even and unlabored. RN7 asked Finnerty why he did not turn in a stool sample for Norovirus screening and Finnerty replied that he did not have a bowel movement since his diarrhea stopped.

On March 25, 2020, an eighth Registered Nurse (RN8) visited Finnerty. Finnerty told RN8 that he was constipated, experiencing shortness of breath, and generally felt weak. RN8 noted that Finnerty appeared pale and his breathing ineffective. RN8 referred Finnerty to a second doctor. The second doctor made the following observations: Finnerty appeared alert, calm, and cooperative. He appeared slightly short of breath, but his speech was coherent and his gait normal and steady. Finnerty's vital signs were: BP 136/86, Temperature 98.2 degrees, Pulse 94, O2 Saturation 90%. This doctor noted a decreased breath sound at the base of Finnerty's right lung, but otherwise his lungs sounded clear. He could not exclude pneumonia. The doctor ordered a chest x-ray for Finnerty and prescribed him Levaquin. He recommended Finnerty receive daily nebulizer (breathing) treatments. RN2 administered 500 mg of Levofloxacin to Finnerty and ordered the chest x-ray.

On March 27, 2020, at approximately 9:35 a.m., RN4 contacted an OCSD Correctional Service Assistant (CSA). RN4 told CSA she was administering a nebulizer treatment to Finnerty in Mod O when he began to display breathing difficulties. RN4 recommended Finnerty be seen by the doctor. At 11:11 a.m., the doctor determined that Finnerty needed to be transported to OCGMC. The OCGMC on-duty physician agreed to accept the transfer of Finnerty to OCGMC. A CARE ambulance transported Finnerty to OCGMC. At approximately 2:29 p.m., Finnerty arrived in the OCGMC Emergency Room. Finnerty was alert and talking but experiencing shortness of breath. Finnerty was admitted for acute hypoxic respiratory failure. A few hours after being admitted, Finnerty's breathing became compromised; he was intubated, sedated, and placed under the Intensive Care Unit (ICU).

On March 29, 2020, at approximately 4:20 a.m., Finnerty went into cardiac arrest. The ICU staff performed cardiopulmonary resuscitation (CPR), administered 2 rounds of epinephrine, sodium bicarb, and calcium chloride. He was revived but listed in very critical condition. At approximately 9:43 a.m., Finnerty suffered a second cardiac arrest. ICU staff administered one round of epinephrine and performed CPR. He was revived but his blood pressure was critically low. At approximately 11:43 a.m., Finnerty suffered a third cardiac arrest. The ICU staff resuscitated him and administered Vasopressin in an attempt to maintain his blood pressure. At approximately 2:40 p.m., Finnerty suffered a fourth cardiac arrest. The ICU staff resuscitated him, but his blood pressure was so low that they had to use a Doppler to obtain a reading. At approximately 3:10 p.m., Finnerty suffered a fifth cardiac arrest and was asystole. The ICU doctor determined that all advanced life saving measures should be suspended due to Finnerty's poor prognosis and comorbidity. Finnerty was pronounced deceased at 3:13 p.m.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Heart blood standard
- 37 hospital photographs
- 57 autopsy photographs
- 20 post-embalming photographs

AUTOPSY

On April 2, 2020, independent Forensic Pathologist Dr. Scott Luzi conducted an autopsy of Finnerty's body. Dr. Luzi found no obvious signs of trauma on the body. Dr. Luzi noted that Finnerty had an enlarged heart and COPD. Dr. Luzi determined Finnerty's cause of death to be natural due to hypertensive and atherosclerotic cardiovascular disease.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Finnerty's postmortem blood and antemortem blood yielded the following results:

DRUG	Postmortem Blood	Antemortem Blood
Caffeine	Detected	Detected
Etomidate	Detected	Detected
Gabapentin	5.87 ± 0.59 mg/L	6.26 ± 0.62 mg/L
Hydroxychloroquine	Detected	
Midazolam	0.283 ± 0.033 mg/L	
Norfluoxetine	Detected	Detected

BACKGROUND INFORMATION

Finnerty had a State of California Criminal History record that revealed arrest for the following violations:

- Auto Theft
- Burglary
- Assault & Battery
- Domestic Violence

- Driving under the Influence of Alcohol
- Driving on a Suspended License
- Drunk in Public
- Possession of an Open Alcoholic Container in a Vehicle
- Possession of a Controlled Substance
- Unlawful Possession of a Handgun
- Tamper with the Identification Marks on a Weapon
- Possession of a Dangerous Weapon

THE LAW

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove that a person is guilty of murder, the following must be proven:

a. The person committed an act that caused the death of another human being;
b. When the person acted he/she had a state of mind called malice aforethought; and
c. He/she killed without lawful excuse or justification.

There are two kinds of malice aforethought, express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he acted he knew his act was dangerous to human life, and he/she deliberately acted with conscious disregard for human life.

A person can also commit murder by his/her failure to perform a legal duty, if the following conditions exist:

a. The killing is unlawful (*i.e.*, without lawful excuse or justification);
b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
c. The failure to act is dangerous to human life; and
d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

A person can also commit involuntary manslaughter by failing to perform a legal duty, if the following conditions exist:

a. The person had a legal duty to the decedent;
b. The person failed to perform that legal duty;
c. The person's failure was criminally negligent; and
d. The person's failure caused the death of the decedent.

In *Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 250-251, the court held that there is a "special relationship" between jailer and prisoner:

> "The most important consideration 'in establishing duty is foreseeability.' [citation] It is manifestly foreseeable than an inmate may be at risk of harm…. Prisoners are vulnerable. And dependent. Moreover, the relationship between them is protective by nature, such that the jailer has control over the prisoner, who is deprived of the normal opportunity to protect himself from harm inflicted by others. This, we conclude, is the epitome of a special relationship, imposing a duty of care on a jailer owed to a prisoner, and we today add California to the list of jurisdictions recognizing a special relationship between jailer and prisoner."

California Government Code 845.6 codifies that the special relationship that exists in a custodial setting gives rise to a legal duty, as follows:

> "A public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care."

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he/she acts is so different from how an ordinarily careful person would act in the same situation that his/her act amounts to disregard for human life or indifference to the consequences of that act. An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor; however, it does not need to be the only factor that causes the death.

LEGAL ANALYSIS

In this case, there is no evidence whatsoever of express or implied malice on the part of any OCSD personnel or any inmates or other individuals under the supervision of the OCSD. Accordingly, the only possible type of homicide to analyze in this situation is murder or manslaughter under the theory of failure to perform a legal duty. Because Finnerty was in custody of OCSD, OCSD owed a legal duty of care to him. The totality of all the facts and circumstances demonstrate a lack of evidence to prove beyond a reasonable doubt that OCSD breached its legal duty of care to Finnerty. The evidence also shows that Finnerty's cause of death was natural due to his underlying health conditions.

When OCSD took custody of Finnerty, OCHCA conducted a medical screening of him. Finnerty stated that he had a history of health conditions and suffered from mental health issues. The staff provided him with the necessary treatment to address his health concerns and a psychiatric evaluation was also performed. The Mental Health Practitioner provided Finnerty with the proper medication after his examination. Also, because it was foreseeable that Finnerty would be at risk of harm due to his medical problems, OCSD placed Finnerty in the Medical Ward.

Throughout March, Finnerty submitted numerous "Inmate Health Message Slips," and either a RN would address his concerns by providing him with the proper treatment or he would be referred to a doctor for further evaluation. OCSD constantly monitored Finnerty and responded to his health concerns by notifying the medical staff. There is no evidence to prove beyond a reasonable doubt that the care Finnerty received from OCSD was negligent or reckless.

Accordingly, the evidence supports the conclusion that while in custody, OCSD provided Finnerty with the proper care and treatment to address his many medical problems.

CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion that there is a lack of sufficient evidence to support a finding beyond a reasonable doubt that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty causing the death of Finnerty. The evidence shows that Finnerty died as a result of hypertensive and atherosclerotic cardiovascular disease and that the death was a natural one.

Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully submitted,

RAYMOND GENNAWEY
Deputy District Attorney
Gangs Unit

Read and Approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Felony Operations IV

Read and Approved by District Attorney **TODD SPITZER**