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September 3, 2014

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

Re: Custodial Death on December 4, 2013
Death of Inmate Jeffrey Jay Johnson
District Attorney Investigations Case # S.A. 13-029
Orange County Sheriff's Department Case # 13-235757
Orange County Crime Laboratory Case # F.R. 13-56798

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving the Dec. 4, 2013, custodial death of 49-year-old inmate Jeffrey Jay Johnson.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Johnson. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to determine whether criminal culpability exists on the part of any Orange County Sheriff's Department (OCSD) personnel or any other person under the supervision of the OCSD.

On Dec. 4, 2013, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the James A. Musick Facility (JAMF) after Johnson died while in custody after receiving medical treatment at the hospital. During the course of this investigation, nine witness interviews and 30 jail canvass interviews were conducted. The OCDASAU also 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 reviewed all evidence and applicable legal standards impartially. 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 acting under the supervision of the OCSD. The OCDA will not be addressing 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 and 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 a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide or Gang Units review 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 his or her supervisor, and this Assistant District Attorney eventually will review and approve any legal conclusions and resulting memoranda. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

Johnson had history of drug and alcohol abuse. He also suffered from high blood pressure and chronic lower back pain.

On Sept. 22, 2013, Johnson was arrested by the Costa Mesa Police Department for an outstanding warrant. During the arrest, eight separately-packaged baggies of methamphetamine were found on his person. Johnson was arrested for the warrant and for possession for sale of a controlled substance. Johnson was transported and booked into the Orange County Jail (OCJ).

Upon booking, Johnson was evaluated by an Orange County Correctional Medical Services (OCCMS) nurse pursuant to OCJ procedure. Johnson told the nurse that he suffered from high blood pressure and had been prescribed Lisinopril for this disorder. Johnson also told the nurse that he suffered from chronic lower back and joint pain and had been prescribed Norco. Johnson admitted to using methamphetamine approximately two days prior to his arrest.

The nurse approved Johnson for housing, but denied him "work status" due to his medical issues. Johnson was transferred to a general population housing unit in OCJ.

On Oct. 24, 2013, at approximately 11:10 p.m., Johnson submitted a medical request to see a nurse due to severe chest pain. An OCCMS nurse examined Johnson and noticed that he was grimacing from pain near his sternum and chest area. The nurse gave Johnson two doses of nitroglycerin, established a twenty-gauge intravenous line, and called for paramedics to transport Johnson to the hospital.

At approximately 11:30 p.m., paramedics arrived and transported Johnson to Western Medical Center-Anaheim (WMC-A).

On Oct. 25, 2013, at approximately 9:34 a.m., Doctor M. examined Johnson in the WMC-A Emergency Room (ER). Doctor M. determined Johnson's vital signs were "stable" and "afebrile." His heart rate was "within normal range and rhythm," and "absent murmurs or rubs." Johnson's toxicology results were also "within normal range." Doctor P. performed an echocardiogram on Johnson's heart and did not request any follow-up examinations.

Johnson was administered the following medications while at WMC-A:

- Sodium Chloride 0.9%
- Lisinopril
- Nitroglycerin
- Acetaminophen

On Oct. 26, 2013, doctors at WMC-A cleared Johnson for discharge with no medical restrictions. Johnson was prescribed the following medications upon discharge:

- Lisinopril, 10 mg per day
- Nitroglycerin, 0.4 mg as needed for chest pains
- Acetaminophen, 325 mg, every six hours or as needed

At approximately 9:30 p.m. on Oct. 26, 2013, Johnson was returned to OCJ and housed in general population.

On Nov. 19, 2013, Johnson submitted a medical request to be placed on a low salt diet due to his high blood pressure and mild chest pains. Johnson's request was approved the following day.

On Nov. 26, 2013, at approximately 8:15 a.m., an OCCMS nurse conducted a routine examination of Johnson. The nurse spoke to Johnson about his back pain and measured his blood pressure. The nurse recommended Johnson continue with taking Motrin for back pain. No other recommendations or significant medical issues were noted.

On Dec. 2, 2013, an OCCMS nurse obtained a blood specimen from Johnson's left arm to submit to the lab and did not note any other ailments or complaints from Johnson during this visit.

On Dec. 4, 2013, at approximately 8:27 a.m., Johnson was cleared by OCJ medical staff to be transferred to JAMF. The JAMF is a minimum-security jail where inmates are offered educational, vocational, and substance abuse programs. Several inmates in Johnson's housing unit were surprised that Johnson would be moved to a work facility in light of his heart condition. Johnson was escorted to a holding cell with numerous other inmates awaiting transport to JAMF.

While waiting in the holding cell, several inmates heard Johnson complain to OCJ staff that he had a heart condition and should not be moved to another facility because he might not get his medication in time. According to Inmate John Doe 1, a deputy responded, "I don't give a f***." Inmate John Doe 2 recalled that a deputy and nurse dispensed medication to several inmates in the holding cell and, as the deputy and nurse began to leave, Johnson told the nurse that he did not receive his medication. According to John Doe 2, the nurse ignored Johnson and walked away.

According to OCJ medical records, Johnson did not receive any prescription medications on the day of his death. Johnson did take Motrin for joint pain and Ranitidine HCL for stomach acid; however, these were over-the-counter medications.

At approximately 3:01 p.m., Johnson was escorted onto the Sheriff's transportation bus with numerous other inmates and driven to JAMF. During the bus ride, Johnson seemed to be "in good spirits," and he did not complain about any pain.

At approximately 4:30 p.m., Johnson arrived at JAMF. OCSD Deputies Joshua Sullivan and Dean Scott escorted Johnson and the other inmates from the bus to the intake building. After Johnson received his clothing and bedding, he went outside and sat on the asphalt area next to the intake building. Deputy Sullivan observed Johnson's torso slowly lean forward, and then Johnson collapsed onto his face. Johnson rolled slightly to his right side and lay motionless. Deputy Sullivan contacted Johnson and noticed that he was breathing heavily. Deputy Sullivan attempted to communicate with Johnson, but he was unresponsive, so Deputy Sullivan requested medical assistance.

Two OCCMS nurses received Deputy Sullivan's call and they responded to the scene. The nurses found Johnson on the ground, lying on his left side. Nurse L. noticed that Johnson's skin color was "bad," and she directed nearby deputies to call for paramedics. She did not observe any signs of trauma or assault on Johnson.

The nurses assessed Johnson and discovered a very faint pulse. Johnson was unresponsive and his body was warm to the touch. After attaching an oxygen line to Johnson's nose, Nurse L. rolled Johnson onto his back, performed a sternal rub, and administered an ammonia inhalant. Johnson did not respond to either form of stimulus.

The nurses prepared an automated external defibrillator (AED) and attached both pads to Johnson's torso. Once attached to Johnson, the AED delivered one shock. After the shock was delivered, OCSD Deputies Benjamin Nicholson and Duy Cuong Ngo began performing cardiopulmonary resuscitation (CPR) on Johnson. Deputy Nicholson delivered chest compressions, while Deputy Ngo used an Ambu-bag to ventilate Johnson. After approximately four cycles of CPR, OCSD Deputy Michelle Moore arrived on scene and took over chest compressions, while Deputy Ngo continued with ventilations. Deputies Moore and Ngo performed CPR on Johnson for an additional four cycles before Orange County Fire Authority (OCFA) personnel arrived on scene.

At approximately 5:06 p.m., OCFA Engine 38 arrived on scene. At this time, Johnson had no pulse and was in full cardiac arrest. OCFA Paramedic Todd Baldridge intubated Johnson using a combination tube, and continued CPR. Paramedic Baldridge also defibrillated Johnson manually one time as part of advanced life support protocol for full cardiac arrest patients.

At approximately 5:24 p.m., Johnson was transported via Doctor's Ambulance to Saddleback Memorial Medical Center (SMMC). While en route to SMMC, Johnson was administered two rounds of epinephrine and continuous CPR was delivered.

At approximately 5:38 p.m., Johnson arrived at SMMC, and his care was relinquished to ER personnel. A doctor replaced the intubation tube put in by paramedics with a larger "7.0" tube. Johnson was unconscious, unresponsive, appeared "grayish-blue" in color, and had no pulse. A nurse administered one ampule of bicarbonate phosphate and one dose of epinephrine, per advanced life support protocol. The nurse also established an intravenous line in Johnson's right arm as part of her treatment.

Advanced life-saving efforts were unsuccessful, and the doctor pronounced Johnson deceased at 5:48 p.m.

AUTOPSY

On Dec. 8, 2013, Doctor Scott Luzi, a Forensic Pathologist on contract with the Orange County Coroner's Office, conducted a post-mortem examination of Johnson and noted the following:

- Enlarged heart and severe Arteriosclerosis with a 99% blockage of the left ventricle
- Fatty liver
- Granular kidneys: consistent with hypertension
- Contusion scar on the left chest wall from previous illness/injury
- No visible signs of injuries or trauma

On March 28, 2014, Doctor Luzi reviewed toxicological and microscopic reports and classified Johnson's cause of death as a myocardial infarction due to atherosclerosis.

EVIDENCE ANALYSIS

The following evidence was collected from Johnson's person:

- A black beaded necklace with a cross
- Miscellaneous paper

Toxicological Examination
A sample of Johnson's postmortem blood tested positive for alkaline drugs – Mirtazapine.

Johnson's Criminal History
Johnson had an extensive State of California Criminal History Record including, but not limited to, possession of a controlled substance and possession of controlled substance paraphernalia.

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, it must be proven:

a. The person committed an act that caused the death of another person;
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;
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 *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 251, the court established that there is a "special relationship" between a custodian and an inmate:

> "The most important consideration in establishing duty is foreseeability. 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 acts is so different from how an ordinarily careful person would act in the same situation that his or 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

There is no evidence of express or implied malice on the part of any OCSD personnel, any inmates or other individuals under the supervision of the OCSD. Accordingly, the only possible type of homicide to analyze in this situation is involuntary manslaughter under the theory of failure to perform a legal duty in a criminally negligent manner.

As an inmate incarcerated in OCJ, the OCSD owed Johnson a duty of care. Based upon the facts of this case, the OCSD provided Johnson with adequate care and, as such, there is no criminal culpability on behalf of OCSD.

Johnson had a documented history of heart problems. During his initial booking, Johnson informed a nurse that he had a prescription for Lisinopril to treat his high blood pressure. A month later, Johnson requested medical assistance because he was experiencing severe chest pain. Johnson was given two doses of nitroglycerin and transported to a hospital. Upon discharge from the hospital, Johnson was prescribed three medications for his heart condition. Johnson was also placed on a low-salt diet.

Prior to his death, Johnson was medically cleared to move housing location by OCSD medical staff. He was prescribed and was taking medication due to his condition of having high blood pressure. While it is correct that on the day of Johnson's death, at approximately 4:30 p.m., he had not yet been given his blood pressure medication (10mg of Lisinopril), this fact was not the cause of his death.

At the forensic autopsy conducted by Dr. Luzi, it was discovered that Johnson had not only an enlarged heart (weight of 520 grams), but a cross section of the vessels showed up to a 99% luminal stenosis (blockage) of the left anterior coronary arteries. This 99 % blockage of the coronary arteries made the risk of an acute myocardial infarction (heart attack) a significant threat and a tragic reality for Johnson. The OCSD medical personnel would have no way of knowing that Johnson had this type of luminal stenosis. The failure to provide Johnson his 10mg of Lisinopril by 4:30pm cannot be considered, with any medical certainty, as a contributing factor to his heart attack. Furthermore, had Johnson been provided this pill before 4:30 p.m., it would not have prevented the heart attack that ultimately caused his death.

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CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, there is insufficient evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD in connection with the death of Johnson.

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

Respectfully submitted,

Stephen J. McGreevy
Senior Deputy District Attorney
Homicide Unit

Read and Approved by **Ebrahim Baytieh**
Acting Assistant District Attorney
Head of Court – Special Prosecutions Unit