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September 8, 2014

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

Re: Custodial Death on August 17, 2013
Death of Inmate John Thomas Sawyer
District Attorney Investigations Case # S.A. 13-020
Orange County Sheriff's Department Case # 13-161249
Orange County Crime Laboratory Case # F.R. 13-51611

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 Aug. 17, 2013, custodial death of 47-year-old inmate John Thomas Sawyer.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Sawyer. 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 Aug. 17, 2013, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the University of California, Irvine Medical Center (UCIMC), where Sawyer was pronounced dead after having collapsed while in custody earlier in the day. During the course of this investigation, 45 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 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. 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, an Assistant District Attorney who 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

Sawyer had a long history of narcotic abuse. Sawyer also suffered from Hepatitis C.

On April 20, 2012, at approximately 1:32 p.m., Sawyer was arrested by the Fullerton Police Department for burglary. He was transported to the Fullerton City Jail (FCJ) for booking. During the booking procedure, Sawyer indicated that he had thoughts of harming himself. He was evaluated by FCJ mental health staff and prescribed Mirtazapine, a major depressive disorder medication, and Olanzapine, an antipsychotic medication.

Sawyer was transferred to the Central Men's Jail on April 30, 2012, and then to the Theo Lacy Facility on Dec. 13, 2012. While in the custody of OCSD, Sawyer was seen by Correctional Medical Services (CMS) on numerous occasions.

During the month of July 2013, Sawyer began complaining to his cellmate, John Doe, of heartburn. The heartburn increased in frequency and severity, which resulted in Sawyer's consumption of mustard from packs received in his meals. Sawyer told John Doe that he had heard mustard was a remedy for suppressing heartburn, so Sawyer began trading food items for mustard packets with other inmates. Dr. Chun Hsien Chang, the Medical Director of Orange County Correctional Health Services, reviewed Sawyer's medical history while housed at the county jail facilities, with particular focus on the time when Sawyer was complaining to John Doe about heartburn. Dr. Chang found no indication in the records that Sawyer ever relayed this condition to anyone at CMS.

On Aug. 17, 2013, at approximately 10:00 a.m., John Doe and Sawyer exited their cell for their scheduled two hours of "dayroom." John Doe did not notice anything "out of the ordinary" with Sawyer when they returned to their cell. Sawyer spent most of the afternoon reading in his bunk, as was normal for him.

At approximately 4:02 p.m., John Doe was attempting to retrieve a slice of bread, owed to him by another inmate, from under their cell door, when he heard a noise behind him. John Doe turned and observed Sawyer "flopping around" on the cell table. John Doe asked Sawyer if he was "okay," but received no response. John Doe checked on Sawyer and realized that he was experiencing some type of "medical problem." John Doe pushed the intercom in the cell and informed OCSD Deputy Jason Owens that Sawyer was "unresponsive and acting strangely in his chair."

Deputies unlocked the cell door remotely and instructed John Doe to exit the cell and walk to a common area. Shortly thereafter, Deputies Owens and Jacob Bieker responded to Sawyer's cell and requested medical assistance. Deputy Owens removed Sawyer from the table, laid him on the floor, and checked his airway. Two CMS registered nurses

responded to Sawyer's cell at 4:04 p.m. For approximately 10 minutes, the two nurses performed Cardio Pulmonary Resuscitation (CPR), while Deputy Owens provided Sawyer oxygen through the use of a bag valve mask (BVM).

Sawyer was unresponsive with agonal breathing (an abnormal pattern of breathing), so an automated external defibrillator (AED) was applied and electrical pulses were administered to Sawyer twice. There was no response from Sawyer and no pulse was registered. CPR was continued on Sawyer with full-flow oxygen.

At approximately 4:11 p.m., Orange Fire Department (OFD) personnel arrived at the Theo Lacy Facility and were escorted by OCSD personnel to the scene. At the scene, OFD Firefighter/Paramedic Mike Camba observed Sawyer lying on the floor, unconscious, and in full cardiac arrest. Firefighter Camba felt that there was not sufficient room in the cell to allow all the personnel to work proficiently, so Sawyer was moved from the cell to a common area within Modular K.

Firefighter Camba checked Sawyer's vital signs and found that he had no detectable pulse, zero blood pressure, zero respirations, and initial cardiac rhythm was in Ventricular fibrillation. Firefighter Camba defibrillated Sawyer, continued CPR, applied a BVM and applied Auto Pulse, an external automated CPR machine. He then started an Intraosseous infusion and administered one milligram of Epinephrine.

At approximately 4:25 p.m., Sawyer was transported to UCIMC by OFD Rescue 5. During the transportation, Sawyer continued to receive CPR and management of his airway, but he did not regain consciousness while in transport.

At approximately 4:34 p.m., Sawyer arrived at UCIMC. OFD paramedics informed the UCIMC Emergency Room (ER) staff, including the attending physician, that Sawyer had been in custody at the OCSD Jail and suffered a cardiac event.

The attending physician and her staff took over CPR on Sawyer and inserted an Endotracheal Tube. The medical staff also continued to provide Sawyer with rescue breaths. Over a period of 15 to 20 minutes, the medical staff provided the following treatment to Sawyer while in the ER:

- Four rounds of CPR
- Four doses of Epinephrine (1 milliliter each)
- A central venous line in the right groin
- Ultrasound of the heart and abdomen
- One shock using the AED

The attending physician conducted a full examination of Sawyer's body and did not see any signs of trauma or injury. The only areas that she did not examine were Sawyer's back and the backside of his head. The attending physician noticed vomit in Sawyer's mouth.

Due to the fact that Sawyer was not showing any cardiac motion on the ultrasound, was asystolic, and had no pulse, the attending physician pronounced Sawyer deceased at 4:50 p.m.

AUTOPSY

On Aug. 21, 2013, Doctor Joseph Cohen, a Forensic Pathologist on contact with the Orange County Coroner's Office, conducted a post-mortem examination of Sawyer. During the exam, it was noted that Sawyer had small abrasions to the right side of his forehead, as well as a minor laceration to his lower lip. He also had multiple rib fractures, which Doctor Cohen noted were consistent with resuscitative efforts.

Doctor Cohen concluded that Sawyer had an enlarged heart and cirrhosis of the liver. Doctor Cohen noted a "95%-99% block" in Sawyer's right coronary artery. Sawyer's liver was inflamed as a result of chronic Hepatitis C. Doctor Cohen concluded Sawyer's cause of death was a result of a fatal cardiac dysrhythmia due to hypertensive and atherosclerotic cardiovascular disease.

EVIDENCE ANALYSIS

The following evidence was collected from Sawyer's person:

- One orange-colored Orange County Jail jumpsuit pants
- Men's white boxer underwear
- One pair of black socks
- One pair of prescription glasses
- Miscellaneous documents

Toxicological Examination

A sample of Sawyer's postmortem blood tested negative for the presence of drugs or alcohol.

Sawyer's Criminal History

Sawyer had a Criminal History Record which included possession of a controlled substance and driving under the influence of alcohol.

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 commits 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.

Legal Duty

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 custodian authorities 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

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 or her act amounts to disregard for human life or indifference to the consequences of that act.

Causation

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 connection with the death of Sawyer, there is no evidence 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.

Although the OCSD owed Sawyer a duty of care, the evidence does not support a finding that this duty was breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

Sawyer had a long history of narcotic abuse and also suffered from Hepatitis C. During the month of July 2013, Sawyer began complaining to his cellmate, John Doe, of heartburn. The heartburn increased in frequency and severity over the following weeks. On the day in question, John Doe alerted OCSD staff as soon as he noticed that Sawyer was "unresponsive and acting strangely in his chair," and OCSD personnel responded immediately. OCSD staff began life-saving measures, which they continued until relinquishing Sawyer to the care of OFD. Finally, Sawyer did not have any signs of injury or trauma to his body inconsistent with those sustained from his collapse and the standard life-saving measures he subsequently received. Thus, there is no evidence to support a finding that any OCSD personnel or any individual acting under the supervision of the OCSD failed to perform a legal duty in dealing with Sawyer.

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CONCLUSION

Based on the aforementioned materials and information, and all the available evidence received and reviewed by OCDA, and pursuant to applicable legal principles, it is our opinion that in connection with the death of Sawyer, there is no evidence of criminal culpability on the part of any OCSD personnel or any individual under the supervision of OCSD. Rather, the evidence clearly and convincingly shows that Sawyer died as a result of a fatal cardiac dysrhythmia due to hypertensive and atherosclerotic cardiovascular disease.

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

Respectfully submitted,

Keith Burke

Keith Burke
Senior Deputy District Attorney
Homicide Unit

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