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October 22, 2012

Sheriff Sandra Hutchens
Orange County Sheriff's Department
550 N. Flower Street
Santa Ana, CA 92701

Re: Custodial Death on February 3, 2011
Death of Inmate Ignacio Delgado Trejo
District Attorney Investigations Case # 11-007
Orange County Sheriff's Case # 11-021234
Orange County Crime Laboratory Case # 11-41644

Dear Sheriff Hutchins,

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 Feb. 3, 2011, death of Ignacio Delgado Trejo, related to medical conditions which became critical while he was in the custody of the Orange County Sheriff's Department (OCSD).

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the death of Trejo. 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 OCSD deputy or any other person under the supervision of OCSD.

On Feb. 4, 2011, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Western Medical Center (WMC) in Santa Ana after Trejo died while in the hospital. Trejo had been admitted to the hospital while in the custody of OCSD; however, by the time of his death, Trejo was no longer in OCSD custody. Nevertheless, due to his critical condition, Trejo remained in the hospital even after his release from custody. The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD deputies or personnel. 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 Orange County Crime Laboratory (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. Prosecutors assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. 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

OCDA investigators discovered that Trejo had a long, documented medical history, replete with multiple serious medical conditions. These medical conditions worsened during the course of Trejo's incarceration at OCJ, resulting in his being taken to WMC in Jan., 2011. He died at WMC on Feb. 3, 2011.

Trejo was first admitted to WMC on January 16, 2011, when he was still in the custody of OCSD. Trejo was in custody as a result of a Nov. 8 2010, arrest by Anaheim Police Department (APD). APD arrested Trejo and booked him at the APD city jail for suspected possession and sales of counterfeit compact discs and counterfeit trade mark. APD personnel conducted a medical screening, which documented that Trejo was currently under the care of a physician, had high blood pressure, had heart surgery six months prior, was taking heart medication three times per day, and was on kidney dialysis three times per week. On Nov. 8, 2010, Trejo was transported to OCJ, where he was booked by OCSD at the OCJ Intake Release Center (IRC) in Santa Ana. There, a Correctional Medical Services (CMS) Registered Nurse (RN) completed an initial medical screening, which indicated Trejo suffered from high blood pressure and [REDACTED]. Trejo indicated he was receiving kidney dialysis treatment. The intake medical screening form completed by the RN indicated that Trejo would be continued on his numerous prescribed medications and provided dialysis three times per week.

Trejo was transferred to WMC on Nov. 13, 2010 due to complications stemming from his multiple medical conditions. On Nov. 16, he was discharged from WMC and returned to OCJ. Over the next several weeks, he continued to receive regular care and treatment from the CMS medical team, and his condition remained stable.

On Jan. 16, 2011, at approximately 12:30 p.m., a CMS RN saw Trejo on a routine medical visit and found his body temperature to be abnormally low, his skin was cold and clammy, and his blood pressure low. Consequently, Trejo was transported by paramedics to WMC in Santa Ana for medical treatment. Trejo received care and treatment for several weeks, including several serious medical procedures, but his health continued to deteriorate.

On Jan. 24, 2010, a hematologist examined Trejo, and opined that Trejo's medical condition was grave.

On Jan. 25, 2011, the Deputy Director of the Orange County Health Care Agency, Correctional Health Services authored a letter to the Orange County Superior Court. The Deputy Director outlined Trejo's grave medical condition and requested a compassionate release from custody.

On Jan. 28, 2011, at approximately 10:42 a.m., OCSD obtained a court ordered compassionate release for Trejo from Orange County Superior Court Judge Roger Robbins. At 12:55 p.m., Trejo was released from the custody of OCSD on his pending court case, case number #10NF3425, due to his grave medical condition. However, Trejo remained under the care of the hospital personnel.

Feb. 3, 2011, Events

At approximately 8:55 p.m., Trejo was transferred to the WMC Intensive Care Unit.

At approximately 10:23 p.m., a nurse entered Trejo's room and observed, via the heart monitor, that Trejo's heart rhythm was now in ventricular tachycardia. Trejo was unresponsive, not breathing, and absent a pulse.

At approximately 10:25 p.m., the nurse initiated the medical emergency code blue process. The nurse administered chest compressions while another RN administered rescue breaths via an Ambu bag. An emergency room physician responded to the ICU to assist with the medical intervention. As the physician prepared to place an endotracheal tube into Trejo's airway, Trejo's family members, who were bedside, asked medical staff to cease rescue efforts.

At approximately 10:30 p.m., medical efforts were ceased. At approximately 10:50 p.m., Trejo was unresponsive to touch, absent heart or lung sounds, and his pupils were fixed, dilated, and non-responsive to light. Based upon those observations, an attending physician pronounced Trejo dead.

AUTOPSY

On Feb. 8, 2011, at approximately 9:12 a.m., Marin County Coroner Chief Forensic Pathologist Joseph Cohen conducted the post-mortem examination of Trejo at the Orange County Sheriff-Coroner Forensic Science Center. After completing the post-mortem examination, Dr. Cohen concluded that the cause of death was multiple organ failure.

EVIDENCE ANALYSIS

The OCCL analyzed Trejo's post-mortem blood samples for prescription drugs and commonly abused drugs. No drugs other than those administered by the hospital were detected and all were within therapeutic levels.

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.

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 deputy or any inmates or other individuals under the supervision of 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 OCSD owed former-inmate Trejo a duty of care, at least until he was released from their custody by court order, 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).

While Trejo was in custody, OCSD personnel conducted medical screening interviews, sent him for necessary medical procedures including dialysis, and had him housed in the medical unit at OCJ, where he was cared for by licensed doctors and nurses. When medical staff at OCJ saw Trejo's chronic condition begin to deteriorate to a point where they may not be able to provide the necessary treatment for him, he was transferred to WMC. There was no evidence of foul play or criminal negligence on the part of any person who came into contact with Trejo during the time he was in OCSD custody prior to his death.

CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA and pursuant to applicable legal principles, there is no evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of OCSD. Evidence shows that Trejo died as a result of multiple organ failure caused by his many medical conditions.

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



GARY M. LOGALBO
Deputy District Attorney

Read and Approved,



DAN WAGNER
Assistant District Attorney
Head of Homicide Unit