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February 9, 2016

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

Re: Custodial Death on Dec. 29, 2014
Death of Inmate Steven Dale Andreason
District Attorney Investigations Case # 14-023
Fountain Valley Police Department Case # 14-3693
Orange County Sheriff's Department Case # 14-248184
Orange County Sheriff's Department Forensic Science Services Forensic Report 14-56938
Orange County Sheriff's Department Coroner Case # 14-05149-BB

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. 29, 2014, custodial death of 62 year-old inmate Steven Dale Andreason.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Andreason. 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. 29, 2014, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Western Medical Center Anaheim (WMCA), where Andreason died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed three witnesses, 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 officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. 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, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, 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, TARGET, Gang, and Special Prosecution Units review fatal, as well as 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 assistant district attorney supervising the Special Prosecutions Unit, who 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

On Sept. 25, 2014, Andreason drove through an intersection against a red traffic signal and broadsided another vehicle killing the driver of that vehicle and injuring the passenger. Andreason was transported to UC Irvine Medical Center (UCIMC) for treatment of non-life threatening injuries where he was interviewed by an officer from the Fountain Valley Police Department.

At UCIMC, Andreason was evaluated by medical staff which initially noted a [redacted]. Computed Tomography scans and an Magnetic Resonance Imaging (MRI) were done of Andreason with the following findings: no evidence of acute cervical spine fracture or malalignment, but [redacted] no evidence of acute intracranial traumatic abnormality; no acute traumatic abnormality in the abdomen and pelvis, but [redacted]; and [redacted], but no evidence of acute intrathoracic injury. Andreason was placed in a soft cervical spine collar per UCIMC orders.

On Sept. 26, 2015, at 7:45 a.m., after being medically cleared by UCIMC staff, Andreason was arrested and booked in the Orange County Jail (OCJ) for vehicular manslaughter and driving while under the influence of alcohol/drugs in violations of Penal Code section 191.5(a) and Vehicle Code section 23153(a.) Andreason was evaluated at the Intake and Release Center (IRC) where he stated he had been [redacted], [redacted] is the brand name for the prescription [redacted]. Andreason also told IRC intake staff that he had cut his toe approximately three weeks prior when he wasn't wearing his shoes because his feet were swollen. At that time, Andreason had been admitted to Hoag Hospital for [redacted] and he was given prescription antibiotics for an infection in his foot, but he did not take the medications as prescribed.

On Sept. 26, 2014, medical staff at OCJ received Andreason's medical records from UCIMC. Those records did not include a list of medications that Andreason was taking which caused the medical staff at OCJ to request this information from UCIMC. OCJ medical staff also began attempting to get Andreason's medical records from Riverside Regional Medical Center where he had been previously treated. Andreason was housed in the Main Jail, Module A, from Sept. 26, 2014, to Oct. 1, 2014. On Oct. 1, 2014, Andreason was transferred within the Main Jail to the medical ward, Ward D, where he was examined. The medical staff reviewed the medical records from UCIMC which showed changes in Andreason's [redacted]. Orders were made for daily wound care of Andreason's injured toe

through Dec. 18, 2014. Orders were also made for weight checks as follows: once per week starting Oct.1, 2014, through Oct. 14, 2014, and then three times a week for the period of Oct. 29, 2014, to Nov. 27, 2014. A medical plan was made to recheck [redacted], give him an extra blanket and prescribe [redacted] daily through Oct. 15, 2014. Furosemide is used to treat fluid build-up and swelling caused by liver cirrhosis. Potassium chloride is a supplement to treat or prevent low amounts of potassium in the blood. Treatment with "water pills," such as furosemide, can lower the body's potassium level.

While in Ward D, Andreason was seen by medical staff multiple times. On Oct. 3, 2014, Andreason submitted an Inmate Health Medical Slip (IHMS) for neck pain. Andreason was seen by medical staff the following day, Oct. 4, 2014, and stated that he did not need the walking cane anymore. Medical records note that on Oct. 9, 2014, Andreason was seen for wound care. On Oct. 12, 2014, Andreason submitted an IHMS stating "water retention – 10 lbs. per week!" On Oct. 14, 2014, Andreason was seen by the medical staff and as a result of this examination his prescribed dosage of [redacted] was [redacted] per day and [redacted] per day until Oct. 27, 2014.

On Oct. 16, 2014, Andreason was transferred from the medical ward, Ward D, at OCJ to the medical module, Module O, at the Theo Lacy Facility per the request of a treating physician at the jail. Andreason continued to be seen regularly by the medical staff for care for his injured toe. On Oct. 17, 2014, Andreason submitted an IHMS stating "still retaining a lot of water, ankles swelling worse." Andreason was seen the following day, Oct. 18, 2014, by the medical staff. On Oct. 21, 2014, Andreason submitted an IHMS stating, "1. Wound dressing for right big toe; 2. [redacted]; 3. [redacted]." On Oct. 22, 2014, Andreason was seen by the medical staff and he was prescribed s[redacted] with a prescription through Dec. 20, 2014. [redacted] On Oct. 28, 2014, Andreason was seen by the medical staff with a complaint of only neck pain. Andreason was prescribed [redacted] and referred to podiatry. Propranolol is used to treat heart and circulatory conditions. During the above time period, Andreason also received the following support for an [redacted].

On Oct. 29, 2014, a treating physician at the jail received a call from Andreason's attorney regarding concerns by Andreason's family about Andreason's fluid retention. The medical records indicate that according to Andreason's attorney, Andreason had been "routinely undergoing procedure to remove excess fluid. Presumably referring to paracentesis for ascites." Following this call from the attorney, the medical staff noted that Andreason "will start routine weight monitoring at next sick call, awaiting labs." The following day, on Oct. 30, 2014, Andreason was prescribed [redacted]; this was increased to [redacted] day on Nov. 6, 2014, after OCJ medical staff reviewed Andreason's medical records from Riverside Regional Medical Center which noted that Andreason was getting [redacted]. The medical plan was to restart [redacted], and to continue [redacted].

OCJ medical staff continued to see Andreason through November and December 2014 for care of the wound on his toe. On Nov. 6, 2014, Andreason submitted an IHMS stating he had melanoma on his face and needed a cane for his knee; he was seen by the medical staff and he was prescribed [redacted], an antibiotic, for his toe for six days. In addition, the treating physician gave Andreason a referral to the dermatologist for surgery to remove [redacted] from Andreason's face. On Nov. 18, 2014, and Dec. 4, 2014, Andreason was seen by the dermatologist at WMCA. In addition, on Nov. 19, 2014, Andreason was seen in the podiatry department for wound treatment; Andreason was prescribed the [redacted] again, but in the dosage of [redacted].

On Dec. 21, 2014, Andreason submitted an IHMS for "1. Wound dressing right big toe, 2. [redacted], 3. [redacted]." On Dec. 22, 2014, while at a follow up medical appointment, Andreason complained of having [redacted] the previous night and feeling like he was [redacted]. Andreason stated that he didn't call for help because it was Sunday night and he didn't want to bother anyone. Andreason was advised by the medical staff to call for help if he ever felt the same way no matter what day it was. Andreason was seen by the medical staff the following day on December 23, 2014 for wound care. The medical records indicate that when Andreason was examined on Dec. 23, 2014, he had even and unlabored breathing, his stomach protruded and was distending, but no acute distress was noted. Andreason was prescribed [redacted] by the treating

physician. Colchicine is an oral drug used for treating acute gout. Indomethacin is a nonsteroidal anti-inflammatory drug that works by reducing hormones that cause inflammation and pain in the body.

On Dec. 25, 2014, Andreason submitted an IHMS marked for mental health indicating that he was "anxious," and that he had not "slept in 4 days, need help." On Dec. 26, 2014, Andreason was seen by the medical staff due to his leg being reportedly "red, warm and swollen." The attending Nurse Practitioner submitted a request for emergency service with a priority date of Dec. 26, 2014. The indication for the services noted that Andreason had a history of [redacted] The attending Nurse Practitioner ordered blood work and lab work to be done immediately. That very same day, Dec. 26, 2014, Andreason was transferred from the OCJ to WMCA. Andreason was transported via Care Ambulance in a "non-emergency" status. Andreason was admitted to WMCA at 8:15 a.m., with an initial intake diagnosis by the attending physician of [redacted].

On Dec. 27, 2014, Andreason was transferred to the Intensive Care Unit (ICU) after a sudden onset of [redacted] It was also noted that Andreason continued to be in an altered state of consciousness, have swelling in his lower extremities, low sodium levels, [redacted] and an [redacted]. Andreason was examined by a specialist in pulmonary and critical care and also by a cardiologist. The cardiologist noted new onset of [redacted]. The treating physicians put in place a plan to continue monitoring Andreason in the ICU but no anticoagulation would be carried out due to the [redacted].

On Dec. 28, 2014, the attending physician determined from lab tests conducted on Andreason that he had a [redacted]. Andreason's irregular heart beat had improved from the initial examination, but Andreason continued to show signs of having an altered state of consciousness. The attending physician determined that Andreason's prognosis was grave due to the [redacted]. Andreason was prescribed [redacted].

On Dec. 29, 2014, at approximately 4:30 a.m., the primary care nurse in ICU observed that Andreason's heart rate had quickly elevated from 110-130 beats per minute (BPM) to 150 to 180 BPM. Andreason's oxygen saturation had decreased to a level of 80 percent, which was considered very low. Due to Andreason's declining symptoms, the attending primary care nurse supplemented Andreason's oxygen and summoned the on-duty cardiologist. The cardiologist ordered the administration of [redacted] to Andreason for his [redacted]. However, Andreason's condition continued to deteriorate and he was displaying aganol breathing. A respiratory therapist used an Ambu-bag to administer 100 percent oxygen to Andreason to assist his breathing after seeing his declining symptoms. At 5:03 a.m., the medical staff called a "Code Blue" medical emergency to alert hospital staff that Andreason was asystole, flat-lined or absent a heartbeat. Cardiopulmonary resuscitation (CPR) was started and the emergency room physician was paged to respond to the ICU. The attending emergency room physician responded to the Code Blue call and intubated Andreason and CPR was continued. During the Code Blue intervention, Andreason was administered [redacted] and [redacted] per advanced life-saving protocols. Andreason's condition did not improve, and at 5:33 a.m., the attending physician pronounced Andreason deceased after the defibrillation attempts and advanced life saving measures were unsuccessful.

On Dec. 29, 2014, Andreason's sister was notified of his death. Andreason's sister stated that Andreason had been living with her for six years and his health had been declining. She further advised that Andreason had several medical issues that included [redacted]. Andreason's sister indicated that she last visited Andreason on Dec. 19, 2014, at the Theo Lacy jail facility. She stated that Andreason appeared to be in better health on that visit and stated that Andreason had not made any reports to her of any altercations while in custody.

AUTOPSY

On Jan. 4, 2015, the autopsy was conducted by Forensic Pathologist Dr. Scott A. Luzi at the Orange County Sheriff-Coroner's Forensic Science Center. The examination found no evidence of any major or minor injuries. Dr. Luzi notated that Andreason had a [redacted] and an [redacted], possibly due to [redacted]. The final autopsy report documented that Andreason suffered from 16 natural disease and pre-existing conditions: [redacted]. Following the autopsy, Dr. Luzi concluded that the manner and cause of Andreason's death was natural and the result of "complications of [redacted]."

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Andreason's postmortem blood yielded the following results:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
[redacted]	Postmortem blood	[redacted] Detected
Ethanol/Volatiles	Postmortem blood	None detected
Benzodiazepines	Postmortem blood	Negative
Cocaine and/or Metabolite	Postmortem blood	Negative
Phenethylamines	Postmortem blood	Negative
Opiates	Postmortem blood	Negative
Oxycodone and/or Oxymorphone	Postmortem blood	Negative
Cannabinoids	Postmortem blood	Negative
Zolpidem	Postmortem blood	Negative

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 person;

b. When the person acted he/she had a state of mind called malice aforethought; and

c. The person 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/she acted he/she knew his/her 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 section 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/she 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 the present 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.

Although the OCSD owed Andreason a duty of care, the evidence does not support a finding that this duty was in any way breached – either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter.) The evidence in this case shows that when Andreason was taken into the custody of the OCSD, he had been an [redacted] and a daily smoker. He suffered from [redacted], had an infection in his foot that he had hurt three weeks prior for which he was not taking the necessary antibiotics, and he also had a [redacted]. The evidence shows that from the point that Andreason came into the custody of the OCSD, the medical staff at the jail as well as the hospital took repeated steps to ensure that Andreason's medical conditions were treated and

monitored. Orders to care for the infection in his foot on a daily basis were made, the wound was cleaned on a daily basis, and prescriptions for antibiotics were provided as needed. The evidence also shows that Andreason was treated with [redacted], and those prescriptions were adjusted once medical personnel got additional information regarding prescriptions Andreason had been taking prior to his arrest. The evidence further supports the finding that OCSD personnel as well as the medical staff were responsive to Andreason's requests for medical attention.

The totality of all the circumstances clearly supports the conclusion that there is a lack of evidence to conclude that OCSD or anybody under the supervision of OCSD failed to carry out the legal duty owed to Andreason as an inmate in the custody of OCSD. Andreason's death was not the result of any criminal conduct by OCSD or anybody under the supervision of the OCSD.

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 no evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD. The evidence shows that Andreason died as a result of complications of chronic substance abuse with hypertrophy and dilation of the heart. Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully submitted,

DENISE HERNANDEZ
Deputy District Attorney
Special Prosecutions Unit

Read and Approved by **EBRAHIM BAYTIEH**
Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit