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August 16, 2017

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

Re: Custodial Death on May 31, 2016
Death of Inmate Donald Earl Altenburger
District Attorney Investigations Case # S.A. 16-019
Orange County Sheriff's Department Case # 16-131727
Orange County Crime Laboratory Case # 16-49273

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 May 31, 2016, custodial death of 68-year-old inmate Donald Earl Altenburger.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Altenburger. 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 May 31, 2016, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the Orange County Men's Central Jail, where Altenburger died while in custody. During the course of this investigation, 15 witness interviews and seven 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 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 a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions 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 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 Dec. 11, 2015, approximately five months before his death, Altenburger was arrested in Orange County for possession of a metal pipe, metal knuckles, a switchblade knife, heroin, drug paraphernalia, and fraudulently displaying registration tags. Altenburger was transported to the Men's Central Jail for booking.

When Altenburger arrived at the Men's Central Jail, an Orange County Health Care Agency (OCHCA) Registered Nurse (RN) assessed him during the booking process. Altenburger advised the nurse that he had a history of prostate cancer, diabetes, high blood pressure, and substance abuse. Due to Altenburger's medical condition and problems with mobility, he was housed at the Medical Observation Unit (MOU) where he was monitored by medical staff and treated for his conditions. Altenburger was transferred from the MOU to other medical units throughout his stay, but he was eventually moved back to the MOU for medical reasons on May 20, 2016. Altenburger was under 24-hour observation and medical care from the nursing staff in the MOU. There were 11 other inmates housed in the same medical ward as Altenburger.

On May 31, 2016, at approximately 7:00 a.m., an inmate heard Altenburger complaining of stomach pain. The medical staff, including a physician, evaluated Altenburger and took his vital signs between 7:30 a.m. and 8:00 a.m. Altenburger told the medical staff about his stomach pain. The staff continued to monitor him. At approximately 10:30 a.m., the attending physician evaluated Altenburger at his bed side. Altenburger was asked if he was suffering any muscular weakness and he said he was not. Altenburger complained of numbness in his feet, pain in his right knee, and that he was dizzy and cold. Again, Altenburger continued to be monitored by the medical staff. Altenburger was observed moving around, going to the restroom and getting coffee after the physician's evaluation. Altenburger was also seen arguing with another inmate in the morning because the inmate threw an empty milk carton in Altenburger's bag. At approximately 11:00 a.m., Altenburger appeared to be sleeping on his bed and one of the inmates left Altenburger's lunch next to his bed. At approximately 12:30 p.m., one inmate asked Altenburger if he wanted his head shaved, and Altenburger groaned at the inmate.

Deputy Arthur Lucero conducted a head count at 2:32 p.m., and Altenburger did not respond when called upon. Deputy Lucero proceeded to nudge Altenburger, and when Altenburger did not respond the deputy went to get help from a nurse that was in the ward and simultaneously called "Man down in Ward C" over his handheld radio, requesting additional help. Less than a minute later, the attending RN evaluated Altenburger, checking for his pulse. When no pulse was found, he went to get the first aid kit, which contained oxygen, automated external defibrillator (AED), IV fluid, and other medical supplies. The RN attached the AED while Deputy Kaesman began performing chest compressions on Altenburger. Multiple RNs and the attending physician responded to the man down call and arrived on the scene along with three to four deputies. A RN began providing positive pressure ventilation by utilizing the bag valve mask (Ambu bag) on Altenburger, while another RN relived Deputy Kaesman in providing compressions and then another deputy rotated in to help give compressions. The AED advised to stay away from Altenburger as it analyzed his heart rhythm. The AED advised no shock was needed and to continue CPR. This meant the heart was not in a shockable rhythm. The AED went through three or four analyzing periods and advised no shock was needed. Compressions continued while an RN used the Ambu bag with oxygen to assist Altenburger's breathing and the physician assisted with the CPR count. The attending physician also checked Altenburger's left femoral artery for a pulse and did not detect one. While the compressions were being performed, an RN checked

Altenburger's blood sugar level and determined it to be 204. The RN then attempted to start an IV but was unsuccessful. Another RN also attempted to start an IV without success.

At approximately 2:38 p.m., Orange County Fire Authority (OCFA) Engine #75 was dispatched to the OCSD Men's Jail regarding a sick person. OCFA Engine #75 arrived at the scene less than 10 minutes after the initial dispatch. An OCFA paramedic arrived at the MOU and assessed Altenburger and found several indicators of obvious death, including signs of rigor mortis, and his pupils were fixed and dilated. The OCFA attached a cardiac monitor which showed that Altenburger's heart was in asystole and had no electrical activity. At approximately 2:47 p.m., the responding paramedic pronounced Altenburger deceased based on the lack of breathing, cardiac activity, and obvious signs of death.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One inmate orange smock and trousers
- Two black socks
- One white T-shirt

AUTOPSY

On June 1, 2016, Forensic Pathologist Dr. Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Donald Altenburger. The forensic pathologist conducted an extensive examination of Altenburger's body and found no significant injuries or trauma. The forensic pathologist determined that Altenburger had an enlarged heart, blocked coronary arteries, plaque around the lungs, and possible mesothelioma. Past head trauma was also observed, including a bore hole on the left side of the skull to relive pressure from the brain, but no sign of brain damage was found. Following the autopsy, the forensic pathologist concluded that the cause of death was due to natural causes.

EVIDENCE ANALYSIS

An analysis of Altenburger's blood serum showed that his blood serum tested negative for Hepatitis B, and positive for Hepatitis C.

BACKGROUND INFORMATION

Donald Altenburger had a State of California Criminal History record dating back to 1969 that revealed arrests for the following violations:

- Possession of narcotics
- Possession of dangerous drugs
- Driving under the influence of nonnarcotic drugs
- Carry concealed weapons
- Robbery
- Receiving stolen property
- Driving under the influence of alcohol
- Disorderly conduct: under the influence of drugs
- Failure to provide
- Auto theft
- Under the influence of a controlled substance
- Assault with a deadly weapon
- Assault and battery on a person
- Defrauding an innkeeper
- Possession of a switchblade knife
- Nonsufficient funds: checks
- Possession of a hypodermic syringe
- Possession of burglary tools
- Possession of a leaded cane/ billy club/ etc.

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/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.' 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/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 Donald Earl Altenburger 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). There were no signs or indications that Altenburger needed immediate medical attention prior to his death. Altenburger's complaints earlier that morning were directed to the medical staff; the attending physician then assessed him and determined that he did not need additional care at that specific time. Altenburger received prompt and thorough medical treatment for the symptoms he presented while in jail by several medical professionals, and was determined to have died due to natural causes.

Thus, there is no evidence whatsoever to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty.

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 Donald Altenburger died as a result of natural causes.

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

Respectfully submitted,

Katherine David

Katherine David
Deputy District Attorney
Gang/TARGET Unit

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