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JENNY QIAN
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September 6, 2017

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

Re: Custodial Death on September 16, 2016
Death of Inmate Gregory Douglas Gutridge
District Attorney Investigations Case # S.A. 16-030
Orange County Sheriff's Department Case # DR 16-241270
Orange County Crime Laboratory Case # FR 16-55016
Orange County Sheriff-Coroner Case # 16-04007-RR

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's Office (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the Sept. 16, 2016, custodial death of 65-year-old inmate Gregory Douglas Gutridge.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Gutridge. 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 September 16, 2016, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Anaheim Global Medical Center (AGMC), where Gutridge died while in custody while receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU obtained and reviewed reports from the OCSD, Orange County Crime Laboratory (OCCL), incident scene photographs, Orange County Sheriff-Coroner, medical records, 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, 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 Dec. 10, 2014, Gutridge was arrested by the Orange County Homicide Task Force for murder. Gutridge was booked into the Orange County Jail and was later housed at Central Men's Jail. On Aug. 26, 2016, Gutridge was transported to Orange County Global Medical Center (OCGMC) for pneumonia-like symptoms. During Gutridge's medical evaluation, he was diagnosed with small cell carcinoma (cancer) of the lung and admitted to the hospital for medical treatment under the watch of OCSD. Gutridge discussed his condition with admitting doctors and decided to refuse aggressive treatment and to be placed in comfort care. On Sept. 4, 2016, Gutridge signed a Do Not Resuscitate (DNR) order, which included no cardiac compressions, emergency medications, defibrillation or assisted ventilation. Gutridge was given weeks to months to live. On Sept. 13, 2016, Gutridge was transported to Correction Medical Services (CMS). The following day, Gutridge was transported via ambulance to Anaheim Global Medical Center (AGMC). The attending physician diagnosed Gutridge with advanced undifferentiated small cell carcinoma of the lung. Gutridge was placed in hospice at AGMC for further comfort care.

On Sept. 16, 2016 at 7:00 a.m., AGMC registered nurses entered Gutridge's room to check his status and discovered Gutridge was not breathing and had no pulse. Due to the DNR order, no medical intervention was initiated. Gutridge had a nasal oxygen mask, a pulse oximeter to his right index finger, an intravenous line to the inside of his right upper arm, a blood pressure monitor to his left bicep, compression wraps around both calves, and a Foley catheter. The registered nurses notified the on-duty physician of Gutridge's condition, and the on-duty physician was pronounced Gutridge dead at 7:30 a.m.. The immediate cause of death was believed to be advanced undifferentiated small cell carcinoma of the lung.

AUTOPSY

On Sept. 21, 2016, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Gutridge. Dr. Luzi stated that x-rays revealed Gutridge had a metal plate in his jaw and appeared to have brain damage from a previous gunshot wound, but determined neither was the cause of death. The final autopsy diagnosis was:

- No major and no minor injuries
- Natural disease and pre-existing conditions of:
 - Healing and healed skin erosions
 - Left pleural plaques
 - Cystic lesion, right frontal lobe of the brain
 - Pulmonary congestion and edema
 - Pleural mass, left lung (history of small cell carcinoma of the lung)
 - Moderate, one-vessel coronary atherosclerosis
 - Moderate peripheral atherosclerosis and Nephrosclerosis
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Following the autopsy, Dr. Luzi determined that Gutridge died from natural causes due to complications of small cell carcinoma of the lung.

EVIDENCE ANALYSIS

Toxicological Examination

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Opiates	Postmortem Blood	Presumptive Positive
Morphine (Free)	Postmortem Blood	Blood 0.779 ± 0.095 mg/L Brain 0.249 ± 0.031 mg/kg
Ethanol/Volatiles	Postmortem Blood	Not Detected

Additionally, Gutridge's postmortem blood was positive for Hepatitis C.

BACKGROUND INFORMATION

Gutridge had a State of California Criminal History record that revealed arrests dating back to 2010 for the following violations:

- Murder
- Petty Theft
- Under the Influence of a Controlled Substance
- Driving Under the Influence
- Driving with a Suspended Driver's License

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 beyond a reasonable doubt:

- 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.’ [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 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 Gutridge 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). From the onset of Gutridge’s pneumonia-like symptoms on Aug. 26, 2016, to the date of his death on Sept. 16, 2016, Gutridge received appropriate medical care while in the custody of OCSD. The autopsy revealed no signs of minor or major injuries that would have attributed to Gutridge’s death other than his advanced lung cancer. Following the autopsy, Dr. Luzzi determined the immediate cause of death was complications of small cell carcinoma of the lung. Even if Gutridge had complications that were unrelated to his cancer, his DNR order would have prevented any medical intervention. Gutridge was fully informed of his treatment options with his doctor and refused aggressive treatment and instead signed a DNR and lived in comfort care.

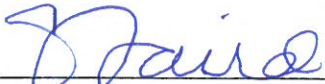
Thus, there is no evidence whatsoever to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty.

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 Gutridge died of natural causes as a result of complications of small cell carcinoma of the lung.

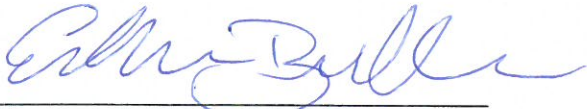
Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully submitted,



SUSAN LAIRD

Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **EBRAHIM BAYTIEH**

Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit