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May 20, 2014

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

Re: Custodial Death on June 2, 2013
Death of Inmate Daniel Aguirre Martinez
District Attorney Investigations Case # S.A. 13-012
Orange County Sheriff's Department Case # 13-103684
Orange County Crime Laboratory Case # 13-47719

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 June 2, 2013, custodial death of 56-year-old inmate Daniel Aguirre Martinez.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Martinez. 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 June 2, 2013, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Western Medical Center – Santa Ana (WMC-SA), where Martinez 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 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 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, and this Assistant District Attorney eventually 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

Martinez was a long-term drug abuser with a significant medical history of Hepatitis C, cirrhosis, and diabetes.

On Feb. 5, 2013, at approximately 11:00 a.m., Martinez was arrested by the Orange County Probation Department (OCPD) for a probation violation. He was transported from OCPD to the Intake/Release Center of the Orange County Jail (OCJ) in Santa Ana for booking. During the booking process, Martinez responded to a series of medical screening questions and indicated that he consumed alcohol regularly and that he had consumed 24 ounces of alcohol that morning. Martinez was booked into the Medical Housing Unit of the OCJ.

On Feb. 11, 2013, Martinez was cleared for regular housing and placed in the Central Men's Jail (CMJ). On March 7, 2013, he was transferred from the CMJ to the Theo Lacy Facility (TLF). On March 19, 2013, Martinez was transferred from the TLF back to the CMJ and placed in the Medical Housing Unit. On April 7, 2013, he was moved to regular housing.

On May 27, 2013, Martinez was sent to the Medical Dispensary at the CMJ after complaining of pain in his side. OCSD medical staff determined that Martinez had low blood pressure and he was transferred, via Care Ambulance, to WMC-SA.

On May 27, 2013, at approximately 9:03 p.m., Martinez arrived in the emergency room (ER) at WMC-SA, where he was evaluated by the on-duty attending ER physician. Martinez suffered from chronic medical illness, including cirrhosis of the liver. His symptomology included general weakness, high levels of ammonia due to possible liver failure, a sepsis infection (blood infection) and acidotic (acid) buildup from the sepsis infection. Martinez was admitted and transferred to the Intensive Care Unit (ICU) of WMC-SA.

The attending physician in the ICU treated Martinez. Martinez complained of generalized weakness with sensation of fever and chills. Martinez advised the physician that he was concerned for his Hepatitis C and cirrhosis. Martinez did not have any signs of injury or trauma to his body, and he did not make any statements regarding being injured or assaulted while incarcerated in the OCJ.

The ICU physician treated Martinez's sepsis infection with antibiotics, and he ordered blood tests, x-rays and Computed Tomography (CT) scans of Martinez's chest, abdomen and pelvis area to identify the location of the infection. The x-rays and CT scans revealed cirrhosis of the liver, "scar and shrunken liver with the enlarged spleen and signs suggested of portal hypotension." The blood tests also were positive for Streptococcus, a bacterial infection. Martinez was administered Vancomycin, Doripenem, and Rocephin intravenously in a central venous catheter.

Martinez's platelet count was low as a result of the Hepatitis C, so he was given multiple transfusions of platelets. The transfusions were ineffective, however, because his cirrhosis of the liver caused his spleen to absorb the platelets without raising the platelet count. The treating physician determined that Martinez had non-recoverable liver disease caused by the Hepatitis C.

On May 31, 2013, Martinez received two units of platelets and his medical condition appeared to improve. He was taken off blood pressure medication and transferred from ICU to a regular WMC-SA hospital room for continued treatment. The ICU physician advised that if Martinez's platelet count increased to "20,000 or greater," they would have removed his central venous catheter, checked for bleeding, and possibly released him from the hospital. Martinez's platelet count never returned to a normal level, and he remained in the hospital.

The following day, Martinez's condition worsened and he was transferred back to the ICU as a result low blood pressure and failure of his liver and kidney. He was also septic, suffering from pneumonia, and unable to discharge urine. At approximately 7:00 p.m., an attending nurse was assigned to care for Martinez and she attempted to stabilize Martinez's blood pressure by administering, with the physician's approval, Vasopressin and Neosynephrine. Martinez also received a blood transfusion and a Sodium Bicarbonate intravenous drip due to renal failure.

On June 2, 2013, at approximately 7:35 a.m., a "Code Blue" medical emergency was called for Martinez in response to his plummeting blood pressure. An attending physician responded from the ER to the ICU. The medications that were administered to Martinez were ineffective. Consequently, Martinez's heart rate slowed, then stopped, and Advance Cardiac Life Support (ACLS) measures were initiated. Cardiopulmonary resuscitation (CPR) was performed, and one milligram of Epinephrine was administered, via intravenous line, five times in an attempt to re-start his heart. Two large ampules of sodium bicarbonate were administered to treat the acid buildup in his blood. Despite these efforts, Martinez's heart rhythm remained a-systole (no cardiac activity of the heart). After approximately 15 to 20 minutes of ACLS procedures, the attending physician determined that further medical intervention would be futile and at approximately 7:54 a.m. he pronounced Martinez deceased.

AUTOPSY

On June 6, 2013, at approximately 8:55 a.m., a post-mortem examination of Martinez was conducted by Doctor Joseph Cohen, a forensic pathologist on contract with the Orange County Sheriff-Coroner. Doctor Cohen conducted an extensive visual examination of Martinez's body and noted that there were no external injuries. The examination revealed that Martinez had three fractured ribs on his left side, and Doctor Cohen noted that such injuries were consistent with a patient who had received CPR.

Following the autopsy, Doctor Cohen determined that Martinez's death was the result of complications of chronic intravenous drug abuse, with other significant conditions consisting of hypertensive cardiovascular disease, and diabetes mellitus.

EVIDENCE ANALYSIS

Toxicological Examination

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

DRUG	MATRIX	RESULT
Lidocain, Tramadol, Propofol	Postmortem Blood	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
Cannabinoids	Postmortem Blood	Negative
Alkaline Drugs	Postmortem Blood	Detected
Weak Acid / Neutral Drugs	Postmortem Blood	Detected
Strong Acid / Neutral Drugs	Postmortem Blood	None Detected

Ethanol / Volatiles	Antemortem Blood	None Detected
Benzodiazepines	Antemortem Blood	Negative
Cocaine and/or Metabolite	Antemortem Blood	Negative
Phenethylamines	Antemortem Blood	Negative
Opiates	Antemortem Blood	Negative
Cannabinoids	Antemortem 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. 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; 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 *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 251, the court held that there is a "special relationship" between custodian and 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."

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 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 Martinez 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).

Martinez suffered from chronic medical illness, including cirrhosis of the liver, diabetes, and Hepatitis C. Upon learning that Martinez was experiencing pain in his side, the OCSD immediately transferred him to a medical facility. Physicians determined that Martinez's liver was failing, his blood was infected, and acid buildup was slowing his heart rate. Martinez did not have any signs of injury or trauma to his body, and he did not make any statements regarding being injured or assaulted while incarcerated in the OCJ. 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 Martinez died as a result of complications of chronic intravenous drug use, heart disease, and diabetes.

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

Respectfully submitted,

Ebrahim Baytieh
Senior Deputy District Attorney
Assistant Head of Court - Homicide Unit

Read and Approved by **Dan Wagner**
Assistant District Attorney
Head of Court - Homicide Unit