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January 28, 2014

Chief Kevin J. Raney
Garden Grove Police Department
11301 Acacia Parkway
Garden Grove, CA 92840

Re: Custodial Death on August 18, 2012
Death of Inmate Joel Duran
District Attorney Investigations Case No.: S.A. 12-019
Garden Grove Police Department DR No.: 12-11665
Orange County Crime Laboratory Case No.: 12-52448
Coroner Case No.: 12-03188BA

Dear Chief Raney,

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 Aug. 18, 2012, custodial death of inmate Joel Duran.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Aug. 18, 2012, custodial death of inmate Duran. 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 Garden Grove Police Department (GGPD) officer, staff, contractor or any other person under the supervision of the GGPD.

On Aug. 18, 2012, OCDA Special Assignment Unit (OCDASAU) Investigators responded to GGPD and Garden Grove Hospital & Medical Center (GGHMC) after inmate Duran died while in custody and while being treated at the above hospital. The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and legal standards.

During the course of this investigation, OCDA Investigators interviewed a number of witnesses. Additionally, we obtained and reviewed GGPD reports, GGPD jail video, Garden Grove Fire Department (GGFD) reports, GGHMC medical records, Orange County Crime Laboratory (OCCL) reports and photographs, Orange County Coroner reports and photographs, and other relevant reports and materials.

The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the

part of GGPD officers, staff, contractors or other person under the supervision of the GGPD. The OCDA will not be addressing any 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 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 collections, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and 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 consultations 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.

An important aspect of the investigation of incidents such as this is to seek a statement from people who had contact with the deceased in the hours leading up to his death. All GGPD personnel involved in this incident voluntarily spoke to and were interviewed by OCDA investigators soon after the incident.

FACTS

On Aug.18, 2012, at approximately 8:15 p.m., 25-year-old Duran was contacted in the City of Garden Grove by GGPD Officer James Franks and arrested for a violation of Penal Code Section 148(a), resisting, delaying or obstructing a peace officer in the discharge or attempted discharge of his duty. At the time of Duran's arrest, he was on felony probation for a narcotic offense. Duran had a long history of drug convictions dating back to 2007. Prior to this incident, Officer Franks had not had any contact with Duran.

Following Duran's arrest, he was transported by Officer Franks to the GGPD station and at approximately 8:22 p.m., Officer Franks released Duran to GGPD Detention Officer Camden Drake for purposes of processing Duran into the GGPD jail.

GGPD contracts with The GEO Group for their jail services. The GEO Group is a company that provides professional correctional and detention management services and has had a long term contact with the GGPD. On Aug. 18, 2012, the GGPD jail was staffed by Correctional/Detention Officers Drake, Russell Driscoll and Toby Andazola. The jail complex at GGPD is a relatively small area and contains a West Cell, an East Cell, a Dry Cell, a Jail Staff office, a Booking area, a Finger Print room and an Interview room.

Officer Franks remained in the jail area while Detention Officer Drake searched Duran. Detention Officer Drake conducted a medical screening and asked Duran if he had any medical conditions and if he was taking any medications. Duran replied that he did not have any medical issue. Duran was also asked if he uses any street drugs. Duran denied using any drugs. Detention Officer Drake reported that Duran was wearing a white T-shirt and dark

colored pants and did not appear to have any marks, bruises or any other type of visible injury.

Detention Officer Drake then began a pattern search of Duran's person. Detention Officer Drake asked Duran to open his mouth and noted that Duran was not opening his mouth all the way. Detention Officer Drake then asked Duran, "Hey, what do you have in your mouth?" Duran opened his mouth and removed a plastic bag containing several individual small white plastic baggies and a coin-size Ziploc baggie. The baggies appeared to have been chewed and Detention Officer Drake asked Duran, "Did you swallow any of these? How long have they been in your mouth?" Duran answered that he did not swallow anything, but did not say how long he had had the baggies in his mouth. Detention Officer Drake then had Duran open his mouth and expose the areas covered by his lips and cheeks. Detention Officer Drake did not observe any other items or substances in Duran's mouth. Detention Officer Drake estimated that Duran had been inside the jail for approximately two to three minutes before the baggies were discovered and seized.

Officer Franks, who was nearby and heard Detention Officer Drake say, "What is that?" and "What's in your mouth?" returned to the booking area and recovered the baggies from Detention Officer Drake. Officer Craig Herrick, who was also in the jail at the time, heard Officer Franks ask Duran if Duran had ingested any of the white substance. Duran replied, "No." Officer Herrick heard Officer Franks again asked Duran if he had "eaten or ingested" any of the white substance. Duran insisted he had not.

Officer Franks described the items as "soggy" pieces of plastic, specifically, three little round bindles twisted at one end and a clear coin size Ziploc baggies. Based on his training and experience, Officer Franks recognized the items to be consistent with narcotics packaging. Officer Franks conducted a presumptive test for drugs and the result was positive for amphetamine.

At no time during Officer Franks contact with Duran did he suspect Duran had anything foreign in his mouth or suspect that Duran was under the influence of a controlled substance. Officer Franks noted that Duran spoke normally and did not appear to be concealing anything in his mouth, both before and after his arrest.

At Approximately 8:30 p.m., Officer Franks escorted Duran into a jail interview room, advised him of his rights and spoke with him about his arrest and possession of the baggies. Duran described how he had got the bindles of methamphetamine just prior to being contacted by Officer Franks. Duran said that he had put the plastic baggie and bindles in his mouth shortly before being contacted by Officer Franks, however, he denied swallowing any of the contents. During the interview, Duran appeared normal and did not show any signs of distress or indicate he was having any medical issues.

At approximately 8:40 p.m., Officer Franks released Duran to Detention Officer Russell Driscoll, who escorted Duran to the "dry cell." The "dry cell" does not contain any plumbing or water fixtures and is used for inmates who have not been fully processed and or strip searched. Approximately five minutes later Duran asked for some water. After hearing Duran ask for water, Detention Officer Andazola exited the jail staff office and approached Duran in the dry cell and asked Duran if he "swallowed any dope." Detention Officer Andazola observed Duran sweating and believed Duran's thirst and perspiration could be indicators that he might have swallowed narcotics. Duran denied swallowing any drugs. Detention Officers Andazola and Driscoll then moved Duran to the "east cell," where he could have access to a drinking fountain and toilet. Prior to placing Duran in the "east cell", Detention Officer Driscoll spoke with Duran about whether he had consumed any drugs while in the jail. Duran denied consuming any drugs and assured Detention Officer Driscoll that he was okay. Detention Officer Driscoll stated that other than perspiring, Duran appeared to be acting normal.

While in the east cell, Detention Officer Drake noticed that Duran had taken off his shirt, was sweating and was drinking

a lot of water. Detention Officer Drake also stated that Duran was starting to get "jittery." Detention Officer Driscoll also noted that Duran appeared "more antsy" after he was moved to the east cell. Duran was in the east cell for approximately 15 minutes.

At approximately 9:00 p.m., Detention Officers Drake and Driscoll escorted Duran to the booking room to complete the booking process. At this point in time, Duran was seen as acting erratic, fidgety and was sweating profusely. Detention Officer Drake exited the jail and advised Lieutenant John Keely, Sergeant Mike Smith and Officer Franks of the situation.

At approximately 9:12 p.m., Detention Officer Driscoll called a GGPD dispatcher and requested that GGFD and paramedics respond to the jail to access Duran. Officer Franks and Lt. Keely responded to the jail facility and assisted with Duran, who was very animated and rambling, but not violent.

At approximately 9:17 p.m., GGFD arrived at the jail and began assessing Duran. Paramedics were informed that Duran had possibly ingested an unknown amount of "speed." Duran was conscious and able to walk out of the jail on his own. At approximately 9:25 p.m., Duran was transported to GGHMC. Officer Franks followed Duran to the hospital.

At 9:34 p.m., Duran was admitted to the hospital and began receiving medical care. At the hospital, Duran was assessed as being tachycardic, with a heart rate of 190 beats per minute, uncooperative and very combative. Duran was evaluated for a possible drug overdose and given medications to combat his elevated heart rate.

At 10:05 p.m., Duran went into cardiac arrest and a code blue was called. Medical staff initiated cardio pulmonary resuscitation (CPR) and attempted to establish an intravenous line. Duran was then intubated and medical staff began advance cardiac life support protocols. CPR continued for 30 minutes, however, the advance life saving measures failed to restore a cardiac rhythm and Duran remained without a pulse the entire time.

At 10:35 p.m., a doctor pronounced Duran deceased.

AUTOPSY

On Aug. 20, 2012, at approximately 9:15 a.m., the post-mortem examination of Duran was conducted at the Orange County Sheriff-Coroner Forensic Science Center. The autopsy was conducted by Young-son Kim, M.D., Forensic Pathologist.

Following the autopsy, Dr. Kim concluded that the cause of death was acute polydrug intoxication due to acute methamphetamine and amphetamine intoxication.

EVIDENCE ANALYSIS

Toxicological Examination:

DRUG	MATRIX	RESULT
Amphetamine	Post mortem Blood	17mg/L
Amphetamine	Brain	0.51mg/kg
Methamphetamine	Post mortem Blood	11mg/L
Methamphetamine	Brain	41mg/kg

Controlled Substance Report:

The coin size Ziploc baggie and four plastic bindles removed from Duran's mouth were analyzed with the following results:

Off-white crystalline substance was scraped from two pieces of plastic and a torn plastic bag with a net weight of 397 grams containing methamphetamine. No additional controlled substances were detected.

BACKGROUND INFORMATION

Duran's California Criminal History was reviewed and considered, including multiple arrest and convictions for Transportation and Possession of Controlled Substances, being under the influence of a controlled substances and possess of various pieces of drug paraphernalia.

Duran's mother was contacted as part of the investigation and stated that the decedent was an addict and in her opinion his drug of choice was methamphetamine. She also noted that she would find him to be under the influence of controlled substances on a regular basis.

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 that:

- a. The person committed an act that caused the death of another person;
- b. When the person acted he had a state of mind called malice aforethought; and
- c. He 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 deliberately acted with conscious disregard for human life.

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.

A person can also commit murder by his 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.

LEGAL ANALYSIS

There is no evidence of express or implied malice on the part of any GGPD officers, staff, contractor or other individuals under the supervision of the GGPD. GGPD officers, staff, contractors, individuals under the supervision of GGPD and the involved emergency personnel all performed and acted appropriately under the circumstances. Further, there was no evidence of foul play on the part of any person who came into contact with Duran prior to his death. 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.

GGPD officers and jailers owed inmate Duran a duty of care. However, the evidence does not support a finding that this duty was ever breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

Inmate Duran died due to an accidental drug over dose after he ingested a lethal amount of methamphetamine in an effort to avoid the drugs being discovered by law enforcement.

After the drugs Duran was attempting to conceal were discovered, he was asked by both Detention Officer Drake and Officer Franks if he had swallowed any of the drugs. Duran denied swallowing any of the drugs. During a later interview by Officer Franks, Duran again denied swallowing any of the drugs. And later, Duran was asked by both Detention Officers Driscoll and Andazola if he had swallowed any of the drugs. Again Duran denied consuming any drugs.

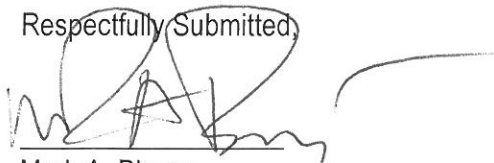
During the short time Duran was in GGPD custody, he was closely monitored and appropriately cared for at all times. Once Duran's behavior began to change, over the course of approximately 20 minutes, he was more closely monitored by multiple jail staff. After Duran's behavior became more erratic and it was suspected that he might have a medical issue, GGF and paramedics were immediately called. At no time did any GGPD officer, staff, contractor or other individual under the supervision of GGPD act with malice toward Duran, fail to act or fail to perform their legal duty.

CONCLUSION

Based on all the evidence provided to, collected by, 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 GGPD officers, staff, contractors or any individual under the supervision of GGPD. Evidence shows that inmate Duran's died as a result of acute polydrug intoxication, due to acute methamphetamine and amphetamine intoxication.

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Mark A. Birney', written over a horizontal line.

Mark A. Birney
Senior Deputy District Attorney
Gang Unit

Read and Approved,

A handwritten signature in black ink, appearing to be 'Marc Rozenberg', written over a horizontal line.

Marc Rozenberg
Assistant Deputy District Attorney