



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

November 13, 2019

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

Re: Custodial Death on March 11, 2019
Death of Inmate Ngoc Dung Nguyen
District Attorney Investigations Case # S.A 19-003
Orange County Sheriff's Department Case # 19-009475
Orange County Crime Laboratory Case # 19-0137-BB

Dear Sheriff Barnes,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the March 11, 2019, custodial death of 65-year-old inmate Ngoc Dung Nguyen.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Nguyen. In this letter, the OCDA describes the criminal investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to review the conduct of any Orange County Sheriff's Department (OCSD) personnel or any other person under the supervision of the OCSD in connection with this custodial death incident.

On March 11, 2019, OCDA Special Assignment Unit (OCDASAU) Investigators responded to University of California, Irvine Medical Center (UCIMC), where Nguyen died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed two witnesses, as well as obtained and reviewed reports from the OCSD and the Orange County Crime Laboratory (OCCL), medical records from the Orange County Health Care Agency (OC HCA), the Anaheim Global Medical Center (Anaheim Global), and UCIMC, 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.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

MAIN OFFICE
401 CIVIC CENTER DR W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92832
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

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 an experienced deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and 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 Senior Assistant District Attorney supervising the Operations IV Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney reviews all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

On November 18, 2017, Nguyen broke her neighbor's large window using a hammer, climbed into the residence, and attacked her neighbor with the hammer. Her neighbor, who was 82 years old, wrestled the hammer away from Nguyen. Nguyen fled to her home where she was contacted by police. The neighbor told police that she and Nguyen had been neighbors for ten years, that she believed Nguyen may have a mental illness, and that the day before the assault, Nguyen had stood outside her neighbor's window yelling, "You are fake, your religion is fake, your God is fake!"

Upon her arrest, Nguyen was taken to the Garden Grove Medical Center where she received treatment for the cuts to her hand caused by breaking the window. After she was cleared and released, Nguyen was taken to the Garden Grove Police Department. When asked by the jailer if she had any medical or psychiatric problems, Nguyen answered she did not.

In the early hours of November 19, 2017, Nguyen was booked into the Orange County Women's Jail. During the intake process, OC HCA conducted a medical screening of Nguyen. She denied having any chronic medical conditions, including cancer. She said she had been previously treated for a mental illness but was not taking any medication. When she was offered medication by the jail medical staff, she spit out the water and the medication. Due to Nguyen being uncooperative, aggressive, and a danger to herself and others, she was placed under psychiatric evaluation. Two days later, Nguyen met with a psychiatrist and agreed to try psychiatric medication. In the ensuing days, as she continued to take the psychiatric medication, Nguyen became calm and cooperative. On November 27, 2017, Nguyen was moved to regular housing. In July 2018, she reported to the mental health staff that she was doing well on the psychiatric medication and having no issues eating or sleeping.

On August 30, 2018, Nguyen complained she was cold and had pain to her left flank. The medical staff observed body tremors but found she did not have a fever. She was given pain medication and told to follow-up with the medical staff if her condition changed. On October 9, 2018, she informed the medical staff that for the past three days, she had had body chills and shakes. On October 21, 2018, she complained about feeling hot. She was given extra water and she informed the medical staff, after lunch, that she was feeling better.

On November 14, 2018, a deputy sheriff referred Nguyen to the medical staff because Nguyen had talked about two recent falls. She told the medical staff that during the past week, she had lost her appetite. The medical staff noted her prior ankle surgery, encouraged her to drink more water, and referred her to the mental health staff to determine if her poor appetite was due to feeling depressed. On November 15, 2018, Nguyen complained about her loss in appetite. When discussing her medical history, she shared that she used to take medication for high cholesterol and for sleeping problems. The next day, Nguyen again complained about not wanting to eat; she added that she felt very cold. The medical staff noted that she tremored and had an elevated heart rate. Nguyen weighed 149 pounds, which was ten pounds less than she had weighed between April and October 2018. The medical staff concluded that she had insufficient fluids. They provided her with additional fluids for the next three days and monitored her weight and vital signs.

For the next seven days, Nguyen periodically reported to the medical staff she had a poor appetite and was feeling very cold; she also relayed that sometimes, she felt very hot and sweat profusely. On November 28, 2019, during a follow-up appointment concerning the fever and chills, Nguyen reported that her appetite was improving. She was prescribed medications to fight a possible infection. She was also referred to a gynecologist who concluded Nguyen was not experiencing post-menopausal hot flashes. Nguyen's weight had also stabilized around 145 pounds.

On December 2, 2018, Nguyen refused to take any of her medication due to an upset stomach. When she again refused on December 4, 2018, the medical staff, at her request, discontinued her vitamins and some of her medication. Nguyen was still given psychiatric medication, but she occasionally refused to take it. On December 13, 2018, Nguyen appeared pale, had an elevated heart rate, and weighed 136 pounds. She reported having a poor appetite and feeling weak on her feet. Lab tests revealed that her hemoglobin had fallen sharply from normal in July to below normal in December and that she had hyponatremia. Based on those lab tests and her elevated heart rate, the medical staff referred Nguyen to the Anaheim Global Medical Center.

After her admission to Anaheim Global on December 13, 2018, Nguyen was given a blood transfusion. The medical staff conducted a full body exam, including urinalysis screening, blood screening, and a CT scan. Those tests did not reveal the cause of Nguyen's severe anemia. On December 18, 2018, an endoscopy and a colonoscopy were performed on Nguyen, in part to rule out chronic gastrointestinal blood loss. There was no evidence of malignancy but the doctor did remove two polyps from her colon. Nguyen was diagnosed with chronic gastritis. When Nguyen was discharged from Anaheim Global on December 19, 2018, her heart rate was normal, her appetite was good, and her hyponatremia was resolved; however, Nguyen remained anemic.

Upon her return, the jail medical staff resumed closely monitoring Nguyen's health. On December 21, 2018, Nguyen said her appetite was okay; but the next day, she reported she was not eating much. Between December 20, 2018, and January 4, 2019, Nguyen's weight steadily decreased from 136 pounds to 130 pounds, she remained weak from the anemia, and she struggled with her appetite. In late December, in an effort to address her anemia and elevated heart rate, the medical staff discontinued Nguyen's psychiatric medication and prescribed her heart medication.

On the morning of January 3, 2019, Nguyen was alert and pale but was not answering questions or following directions. Nguyen was also extremely weak; she needed help getting up from her wheelchair and she could not hold a cup while drinking. Nguyen was moved to the infirmary. On the morning of January 4, 2019, the medical staff observed that Nguyen was still pale, tired, and slow to answer questions. Given the change in mental status, as well as her on-going multiple medical problems, the medical staff sent Nguyen back to Anaheim Global.

The medical staff at Anaheim Global conducted a battery of tests to determine the cause of Nguyen's anemia, high temperature, and other symptoms. They tried switching and then discontinuing her psychiatric medication to reduce her persistent fever without success. On the days Nguyen ran a temperature, she tended not to eat. Even though Nguyen received blood transfusions on January 5, 2019, and January 13, 2019, her blood count continued to decline. After a blood transfusion on January 16, 2019, Nguyen was moved to the ICU when she began shivering, was drenched in sweat, and had an elevated heart rate.

A bone marrow biopsy was performed on January 16, 2019. The results were reviewed on January 18, 2019, and were found to be inconclusive but suggested that Nguyen may have lymphoma. A second bone marrow biopsy was scheduled. On January 30, 2019, the medical staff noted that Nguyen had an enlarged spleen and liver. On January 31, 2019, a second bone marrow biopsy was performed. Based on the results of the second biopsy, Nguyen was diagnosed with lymphoma on February 8, 2019, but the kind of lymphoma and the stage of the cancer still needed to be determined. By February 15, 2019, doctors had narrowed the diagnosis to one of two types of high-grade lymphoma. On February 18, 2019, doctors requested that Nguyen be transferred to UCIMC for chemotherapy services. From her biopsy until her eventual transfer to UCIMC, Nguyen received continuous medical care, including several blood transfusions.

On March 1, 2019, Nguyen was transferred to UCIMC. Upon her arrival, the medical staff discussed with Nguyen their plan of care. At that time, Nguyen was not in any distress. However, by the following morning, Nguyen's temperature had spiked once again and she had become lethargic. As the day progressed, Nguyen had greater and greater difficulty breathing, despite the medical staff's intervention and administration of various breathing treatments. By March 3, 2019, Nguyen was alert, but nonverbal and unable to follow commands except to open her eyes. At that time, the medical staff planned to assess the severity of the cancer and then move forward with chemotherapy after consulting with the psychiatry team.

During the night of March 5, 2019, Nguyen developed respiratory failure. She was taken to the ICU and intubated. On March 6, 2019, the medical staff informed Nguyen's son that his mother had an aggressive disease that would require aggressive chemotherapy and a stem cell transplant. They also explained the challenges of administering chemotherapy to a patient with stage IV cancer who was on a respirator. Nguyen's son agreed to a Do Not Resuscitate (DNR) order.

On March 8, 2019, Nguyen's son advised UCIMC's staff that he wanted to transition his mother to comfort care measures and then remove her from life support. On March 11, 2019, at 11 a.m., after religious prayers were performed, Nguyen's son informed the medical staff he was ready for life support to be withdrawn. After Nguyen was sedated and provided pain medication, the breathing tube was removed. Later that evening, the nursing staff contacted the doctor and requested he confirm that Nguyen had died. After observing no visible signs of breathing, no pulse, no audible sounds from the heart, and no response to light, the doctor pronounced Nguyen dead at 8:10 pm.

EVIDENCE COLLECTED

There was no evidence collected. Twenty-four (24) photos were taken at the scene.

AUTOPSY

On March 20, 2019, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Ngoc Dung Nguyen. There were no minor or major injuries on the body. Dr. Luzi noted a number of natural diseases and pre-existing conditions, including moderate peripheral atherosclerosis, moderate coronary atherosclerosis, and nephrosclerosis. Dr. Luzi concluded that Nguyen's cause of death was complications of mantle cell lymphoma with hypertensive and atherosclerotic cardiovascular disease as contributing factors. The manner of death was determined to be natural.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Ngoc Dung Nguyen's postmortem blood yielded the following results:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Acetaminophen (Free)	Postmortem Blood	4.83 ± 0.52 mg/L
Fentanyl	Postmortem Blood	0.0263 ± 0.0028 mg/L
Norfentanyl	Postmortem Blood	Detected
Diphenhydramine	Postmortem Blood	0.0467 ± 0.0043 mg/L
Midazolam	Postmortem Blood	0.197 ± 0.023 mg/L
Citalopram	Postmortem Blood	0.480 ± 0.089 mg/L
Norcitalopram	Postmortem Blood	Detected

BACKGROUND INFORMATION

The only entry from Nguyen's State of California Criminal History record was the arrest on November 17, 2018 for assault with a deadly weapon, first degree burglary, and inflicting injury on an elder.

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.' [citation] It is manifestly foreseeable that 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 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

All the available evidence clearly indicates that this is not a case involving express or implied malice. Rather, the only issue is whether there was a murder or involuntary manslaughter for failure to perform a legal duty that caused Nguyen's death. Due to Nguyen's incarceration, OCSD owed her a duty of care. The evidence shows that OCSD and those individuals acting under OCSD's supervision fulfilled that duty by providing her appropriate and adequate medical care. Nguyen's death resulted from a myriad of health challenges caused by an aggressive form of lymphoma that was not diagnosed until February 2019.

When Nguyen first entered OCSD's custody in November 2017, OCSD did not know and did not have reason to know that Nguyen had cancer. In the medical history that she provided to the jail staff, Nguyen denied having any chronic illnesses, such as cancer. The medical staff at the jail did not have any reason, based upon the physical appearance of Nguyen or medical testing in November 2017, to believe that she had cancer.

Between August 2018 and January 2019, OCSD did not have reason to know that Nguyen had cancer. There is also no evidence that Nguyen knew before January 2019 that she might have cancer. The various issues that Nguyen experienced in August, October, and November – chills, fever, poor appetite, weight loss – did not hint at a cancer diagnosis. When Nguyen became anemic in December 2018, OCSD transferred her to Anaheim Global for a higher level of care. While at Anaheim Global, some of Nguyen's medical issues were resolved, but not her anemia. When Nguyen returned to OCSD's care, OCSD again monitored her condition carefully. When Nguyen's condition deteriorated on January 4, 2019, OCSD again transferred her to Anaheim Global. Again, throughout this period, there was no reason for OCSD to believe that Nguyen had cancer. Moreover, when Nguyen returned to Anaheim Global, the doctors believed there was a range of diseases that could be causing her anemia. Only after two bone marrow biopsies were performed were doctors able to conclusively diagnosis Nguyen with lymphoma.

Nguyen had an aggressive form of lymphoma that was already in stage IV. Within days of her transfer to UCIMC for chemotherapy, Nguyen's condition deteriorated rapidly. She experienced respiratory failure and had to be intubated, moved to ICU, and placed on a respirator. While in ICU, she remained unresponsive to stimuli. When her dire prognosis was explained to Nguyen's family, her family chose to remove Nguyen from life support.

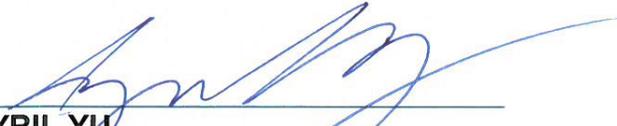
As Nguyen's medical challenges unfolded, OCSD fulfilled their legal duty of care to Nguyen. She was continually provided appropriate medical care at each stage based on the information that OCSD and the medical providers had at that stage. For those reasons, there is no evidence to support a finding that any OCSD personnel or any individual under OCSD's supervision failed to perform a legal duty that resulted in Nguyen's death.

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 that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty causing the death of Nguyen. The evidence shows that Nguyen died of complications of mantle cell lymphoma, and that her manner of death was natural.

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

Respectfully submitted,



CYRIL YU
Senior Deputy District Attorney
TARGET/Gangs Unit



Read and Approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney, Operations IV