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DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TONY RACKAUCKAS, DISTRICT ATTORNEY

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BUREAU OF INVESTIGATION

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DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

May 22, 2012

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

RE: Custodial Death on January 19, 2010 of Michael Patrick O'Shea
Death of Inmate Michael Patrick O'Shea
District Attorney Investigations Case # 10-004
Orange County Sheriff's Department Case # 10-011889
Orange County Crime Laboratory Case # FR1040699

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 January 19, 2010 custodial death of inmate Michael Patrick O'Shea.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Michael Patrick O'Shea. 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) deputy or any other person under the supervision of the OCSD.

On January 19, 2010 OCDA Special Assignment Unit (OCDASAU) Investigators responded to Western Medical Center-Anaheim after Michael Patrick O'Shea died while in custody. The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD deputies or personnel. 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 and 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. 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 consultation 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 and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

On January 19, 2010, O'Shea was pronounced deceased at Western Medical Center in Anaheim where he was serving his sentence after being taken into custody for the sexual assault of a child. At the time of his arrest, Mr. O'Shea suffered from multiple medical complications including rapidly advancing dementia, heart disease, hypertension, bronchial pneumonia, kidney disease, blindness in his right eye, and a recent gastrointestinal bleed. On August 19, 2009, he had also suffered a fall in his home in San Diego County. His health had been in a very well documented state of pronounced decline in the months leading to his incarceration.

On July 2, 2010, an Orange County Superior Court judge, Tom Goethals, sentenced Mr. O'Shea to a 365 day sentence in Orange County jail related to Superior Court case #07NF2712. On September 11, O'Shea was remanded into custody. During consultation with medical staff, it was learned that Mr. O'Shea was to be considered a "No-Code for Duration" meaning that no aggressive or heroic life saving measures should be taken if he experiences life threatening medical distress

In addition to his various medical problems, in November, Mr. O'Shea began refusing his meals. On November 29, a nasogastric tube was inserted into his nose for liquid feeding. Mr. O'Shea's health began to decline further and medical personnel determined Mr. O'Shea's refusal to eat was compounding his myriad health problems. On December 11, 2009, doctors inserted a permanent feeding tube into Mr. O'Shea's stomach. On December 25, Mr. O'Shea developed pneumonia. Finally, on January 19, at 0727 hours, Mr. O'Shea died.

AUTOPSY

On Tuesday, January 21, 2010, at approximately 2:21 p.m., Riverside County Chief Forensic Pathologist, Doctor Richard Cohen, conducted the post-mortem examination at the Orange County Sheriff-Coroner Forensic Science Center. The case was sent to an independent coroner outside of Orange County to avoid any conflict. Dr. Cohen concluded that the manner of death was natural and the cause of death was due to the multiple medical complications listed above. There was no evidence of external trauma, and all blood tests for illicit substances were 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, it 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;
- 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.

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 of malice, a failure to perform a legal duty, or criminal negligence on the part of any of the OCSD deputies, hospital staff, police personnel, jail personnel, or any other inmates or staff under the supervision of OCSD deputies. O'Shea's natural death was due to his vast collection of infirmities, compounded by his own decision not to eat. There was no evidence of foul play on the part of any person who came into contact with Mr. O'Shea prior to his death. It is OCDA's conclusion that the evidence does not support a finding of criminal culpability on the part of any deputy, or any person who came into contact with O'Shea prior to his death.

CONCLUSION


Based on all the evidence provided to and reviewed by the OCDA and pursuant to the applicable legal principles, 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 OCSD. The evidence shows that Michael Patrick O'Shea died as a result of natural causes.

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

Respectfully Submitted,



Matt Murphy
Senior Deputy District Attorney
Homicide Unit



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