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June 19, 2012

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

Re: Custodial Death on December 15, 2010  
Death of Inmate Randy Mao  
District Attorney Case #10-025  
Orange County Sheriff's Department DR #10-231293  
Orange County Crime Lab FR #10-55711  
Orange County Coroner Case #10-06474 MI

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the Dec. 15, 2010, custodial death of inmate Randy Mao.

### **OVERVIEW**

This letter contains a description of the scope and legal conclusions resulting from the OCDA's investigation of the death of inmate Mao at the Western Medical Center in Anaheim (WMCA). Mao was an inmate of the Orange County Men's Jail-Theo Lacy Facility, but was housed in the Correctional Medical Services ward at WMCA at the time of his death. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, and the legal principles applied to determine whether culpability exists on the part of any member of the Orange County Sheriff's Department (OCSD) deputy or any other person who was acting under the supervision of OCSD.

On Dec. 15, 2010, the OCDA Special Assignment Unit (OCDASAU) responded to WMCA after inmate Mao died while in custody. The OCDA conducted an independent and thorough investigation of the facts and circumstances surrounding the death of Mao and independently reviewed all evidence and applied it to the appropriate legal standard. The scope and finding of this report are limited to assessing whether any criminal conduct occurred on the part of any OCSD deputies or personnel. With this letter, the OCDA will not be addressing policy, training, or civil liability on the part of any individuals.

### **INVESTIGATIVE METHODOLOGY**

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 supported by additional Investigators from other OCDA units. OCDASAU consists of six full-time Investigators. 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. The OCDASAU audio-tapes all interviews and the Orange County Crime Lab processes all physical evidence related to the investigation. The OCDASAU Investigator completes the investigation and all photos and documents gathered in relation to the investigation are compiled.

Experienced deputy district attorneys from the Homicide and Gang Units review fatal officer-involved shooting cases and custodial deaths to determine whether any criminal liability exists. Prosecutors from the Special Prosecutions Unit review the non-fatal officer-involved shooting cases. During this process, the reviewing prosecutor may consult with his supervisor. Ultimately, the Assistant District Attorney in charge of the Homicide Unit reviews the Deputy District Attorney's findings, conclusions, and the memo prepared in relation to the death. If necessary, the case may be reviewed by the Senior Assistant District Attorneys, the Chief of Staff and the District Attorney. If necessary, the assigned reviewing Deputy District Attorney may send the case back for further investigation.

All law enforcement personnel involved with this case gave voluntary statements to OCDASAU investigators.

## **FACTS**

On Sept. 18, 2010, Mao was arrested and taken into custody for commercial burglary at South Coast Plaza. As South Coast Plaza security officers detained Mao, one of the officers stepped on Mao's foot as Mao went to the ground, causing injury. He was treated by Correctional Medical Services (CMS) staff and was admitted to the Orange County Jail for booking.

On Dec. 5, 2010, Mao completed three Inmate Medical Message slips requesting to see a doctor due to his inability to eat, breathe, walk, and sleep. He also complained of dizziness and difficulty in standing up. Mao was treated by CMS staff and he requested to return to the jail's regular housing unit.

On Dec. 6, 2010, Mao was again seen by CMS staff and it was determined that Mao had labored breathing and diminished bi-lateral lung sounds. Mao was admitted to WMCA due to his breathing problem. The WMCA doctor who treated Mao stated that Mao's condition was "guarded" and it was determined Mao had pneumonia, bi-lateral pleural effusion, and severe leukocytosis (possible leukemia) and anemia with blood loss.

On Dec. 11, 2010, Mao's condition worsened, as he was succumbing to respiratory failure. A WMCA doctor intubated Mao to assist his breathing. On Dec. 12, 2010, Mao was transferred to the Intensive Care Unit (ICU) at WMCA. According to Mao's treating physician, Mao's condition had deteriorated to "very critical." Mao was comatose and breathing with the assistance of a ventilator.

On Dec. 13, 2010, Mao's brother, Tim Mao, agreed to make Mao a Do Not Resuscitate (DNR) patient based on Mao's multi-organ system failure, as explained to him by the medical staff. Although he agreed to have a DNR order, Tim Mao asked that his brother remain on the ventilator until Mao's entire family could be present.

On Dec. 14, 2010, at 1:45 p.m., Mao was released from OCSD custody pursuant to a compassionate release court order. Although technically released from custody, Mao remained in the hospital on the ventilator.

On Dec. 15, 2010, a WMCA nurse noted that Mao's blood pressure was dropping, he was non-responsive, and his pupils were fixed and non-reactive.

At approximately 7:00 p.m., Mao's family arrived at the hospital and was allowed into the ICU to visit Mao. During their visit, Mao was unconscious and non-responsive. At 9:10 p.m., Mao's heart stopped beating and he had no discernible blood pressure. Since Mao had a DNR order in place, no advance life measures were attempted.

At 9:15 p.m., Mao's treating physician pronounced Mao deceased and ordered the ventilator turned off.

## **AUTOPSY**

On Dec. 17, 2010, at approximately 9:00 a.m., the post-mortem examination of Mao was conducted at the Orange County Sheriff-Coroner Forensic Science Center. Prior to the autopsy, a meeting was held with all involved personnel to discuss the

circumstances surrounding Mao's death. The meeting was attended by Dr. Richard Cohen, Chief Forensic Pathologist for Marin and Napa Counties,<sup>1</sup> as well as several Orange County Forensic Scientists and an OCSD investigator.

After the meeting, the autopsy was conducted by Dr. Cohen. The autopsy was photographed and physical evidence was collected. The autopsy revealed that Mao had generalized bleeding, possibly due to his underlying disease of leukemia. There was swelling of the brain and indications of a stroke, with blood clots on both the right and left sides. The lungs indicated signs of pneumonia. No non-medical external trauma was located on the body. After reviewing post-autopsy toxicological results, Dr. Cohen concluded the cause of death to be complications of acute leukemia.

## **EVIDENCE ANALYSIS**

### **Toxicological Examination**

<b>DRUG</b>	<b>MATRIX</b>	<b>RESULT</b>
Propofol	Post mortem blood	Detected
Midazolam	Post mortem blood	Detected
Fentanyl	Post mortem blood	0.014 mg/L
Fentanyl	Peripheral blood	0.022mg/L
Fentanyl	Liver	0.025mg/L
Fentanyl	Stomach Contents	<0.028mg
Ethanol	Post mortem blood	None detected
Cocaine	Post mortem blood	None detected
Opiates	Post mortem blood	None detected
Benzodiazepines	Post mortem blood	See result for Midazolam
Cannabinoids	Post mortem blood	None detected
Oxycodone/oxymorphone	Post mortem blood	None detected
Hydrocodone/hydromorphone	Post mortem blood	None detected

### **Microscopic Examination**

Multiple sections of lung tissue showed severe leukemic involvement on all sections with tumor emboli and tumors present within the interstitial areas and within the alveoli.

### **THE LAW**

Homicide is the killing of one human by another. Murder, voluntary manslaughter and involuntary manslaughter are types of homicide.

To prove that a person is guilty of murder, the following elements must be proven:

1. The person committed an act that caused the death of another person;
2. When the person acted, he had a state of mind called malice aforethought; and
3. He killed without lawful excuse or justification.

There are two kinds of malice aforethought – express 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.

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<sup>1</sup> Until August 2010, Dr. Cohen was chief forensic pathologist for the County of Riverside.

A person can also commit murder by his failure to perform a legal duty, if the following conditions exist:

1. The killing is unlawful (i.e., without lawful excuse or justification);
2. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
3. The failure to act is dangerous to human life; and
4. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

A person who fails to perform a legal duty can be guilty of the crime of involuntary manslaughter if the following conditions exist:

1. The person had a legal duty to the decedent;
2. The person failed to perform that legal duty;
3. The person's failure was criminally negligent; and
4. 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.

In *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 251, the court establishes that there is a "special relationship" between custodian and inmate: "The most important consideration in establishing duty is foreseeability. It is manifestly foreseeable that an inmate may be at risk of harm...Prisoners are vulnerable. And dependant. 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."

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**

Since there is no evidence of either express or implied malice on the part of any OCSD deputy or employee, the only possible type of homicide to analyze in this situation is criminal liability for failure to perform a legal duty. Though OCSD owed inmate Mao a duty of care, the evidence does not support a finding that this duty was breached—either intentionally (required for murder) or through criminal negligence (as required for involuntary manslaughter.)

From the time Mao entered the custodial environment, OCSD adequately and appropriately provided him care for his various

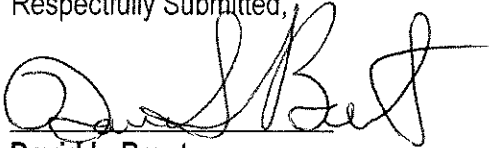
medical needs, from the broken foot to the leukemia, which was determined to have killed him. The OCSD did not attempt to treat Mao's advanced disease at the county jail, but instead had him transferred to a hospital, where Mao ultimately succumbed. There was no "failure to act" by OCSD.

**CONCLUSION**

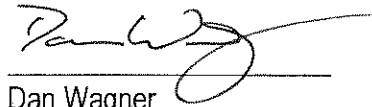
Based on all evidence provided to and reviewed by the OCDA and pursuant to applicable legal principles, there is no evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of OCSD. The evidence shows that Mao died of complications as a result of leukemia.

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

Respectfully Submitted,



**David L. Brent**  
Deputy District Attorney  
Homicide Unit



Dan Wagner  
Assistant District Attorney  
Head of Homicide Unit