



Commission of Correction

THOMAS A. BEILEIN
Chairman

PHYLLIS HARRISON-ROSS, M.D.
Commissioner

THOMAS J. LOUGHREN
Commissioner

September 30, 2016

Sheriff Timothy B. Howard
Erie County Sheriff's Office
10 Delaware Avenue
Buffalo, New York 14202

RE: Richard Metcalf
DOD: 11/30/12
FAC: Erie County Holding Center
MRB#: 12-M-152

Dear Sheriff Howard:

The Commission of Correction and its Medical Review Board (MRB) are in receipt of your letter of August 23, 2016, in which you set forth the Erie County Sheriff's Office response to the preliminary report issued by the MRB in the Matter of the Death of Richard Metcalf, who at the time was an inmate of the Erie County Holding Center (EHC).

The Board reviewed your response at its regular meeting held on September 1, 2016 and at that time determined no changes to the findings were warranted. That said, the MRB further concluded that several points raised in your response do warrant further comment.

Based upon the information offered by those present at his arrest, who at the time described Metcalf's behavior as unpredictable and erratic, inappropriately dressed considering the weather and time of day, along with his in-custody conduct that reportedly included episodes of violent outbursts and paranoia, marked by his claims of hearing voices, the MRB rejects the position that Richard Metcalf was not in a state of acute psychosis.

It is the opinion of the MRB that Richard Metcalf exhibited many of the hallmark signs of a person with an acute mental illness. Considering that the EHC and Erie County Department of Mental Health have at their disposal, some of the most advanced crisis intervention procedures available, the MRB expresses great concern for the lack of proper care and crisis management provided to Metcalf during the forty-eight (48) hours leading up to his death.

Recommendation 4, 7, and 8

The MRB finds the Erie County Sheriff's response to these recommendations as being unacceptable. The county is entirely dismissive of the abundant evidence supporting the conclusion that EHC staff violated established facility policy and procedures, including the manner used when placing and securing a spit mask over a prisoner's head. Added to this was the inexplicable decision by facility personnel to place a pillowcase over the spit mask. Together, the video recordings, post mortem photographs and statements from the EMS personnel present clearly establishes that the spit mask ligature was incorrectly tied around Metcalf's face and neck. Additionally, Metcalf's forensic medical findings included a pH value of 6.90 (low), a PCO2 value

of 91 mmHg (high), and a HCO₃ value 18 mml/L. The MRB concludes that this data makes it indisputable that Metcalf was in acute respiratory failure at the time, with accompanying acidosis. As acute respiratory acidosis is present when an abrupt failure of ventilation occurs, it remains the position of the MRB that Metcalf's death was directly caused by traumatic asphyxia with compression of the torso and neck.

As Correctional Law Article 3 §47 (d) empowers the Commission's Medical Review Board to "...make recommendations to prevent the recurrence of such deaths to the commission (SCOC) and the administrator of the appropriate correctional facility," it is within the Board's purview to determine if certain corrective actions are necessary to address issues identified as factors in the prisoner's death. In doing so the MRB may direct the facility's administrator to re-investigate both the sequence of events leading to the prisoner's death, as well as the actions of any staff involved in the event.

Consistent with the Medical Review Board's legislative mandate to identify and address issues for the purpose of preventing further in-custody deaths, it is requested that the Erie County Sheriff's Office give more thorough consideration of the original findings reported by the MRB, as they pertain to the death of Richard Metcalf.

You should be aware that some of the medical and/or mental health information contained herein may be prohibited by law from secondary dissemination. Therefore, you should check with your county attorney, or other legal advisor, prior to releasing any information contained in this report or its attachments, if any.

If you have any questions, please do not hesitate to contact our office at (518) 485-2464.

Sincerely,



Phyllis Harrison-Ross, M.D.
Commissioner/Chairperson
Medical Review Board

Attachment

Cc: Gail Burstein M.D., Commissioner
Erie County Department of Health
Dr. Tara Mahar, Ph.D., Chief Medical Examiner
Erie County
Frank A. Sedita, District Attorney
Erie County
John J. Mills, Chair
Erie County Legislature
Michael A. Siragusa
Erie County Attorney
Benjamin C. Mizer, Assistant Deputy Attorney General for Civil Rights
US Department of Justice