

NEW YORK STATE COMMISSION OF CORRECTION

In the Matter of the Death :
 :
of Nikko Gambino, an inmate of :
the Genesee County Jail :
 :

FINAL REPORT OF THE
NEW YORK STATE COMMISSION
OF CORRECTION

TO: Sheriff Gary T. Maha
Genesee County Sheriff's Office
165 Park Road
Batavia, NY 14020

GREETINGS:

WHEREAS, the Medical Review Board has reported to the NYS Commission of Correction pursuant to Correction Law, section 47(1)(d), regarding the death of Nikko Gambino who died on July 8, 2011 while an inmate in the custody of the Genesee County Sheriff at the Genesee County Jail, the Commission has determined that the following final report be issued.

FINDINGS:

1. Nikko Gambino was a 42 year old white male who died on 7/8/11 at 3:05 p.m. from untreated acute benzodiazepine and suboxone withdrawal while in the custody of the Genesee County Sheriff's Department at the Genesee County Jail.

[REDACTED] The biochemical laboratory evidence clearly rules out dehydration in this case. Mr. Gambino was serving an intermittent sentence without continuity of care.

- 2.

[REDACTED] In the instant offense on 10/11/10, Gambino was arrested for Criminal Impersonation 2nd. He was sentenced to 59 days of intermittent time at the Genesee County Jail. On 6/28/11 during his intermittent sentence at the Genesee County Jail, Gambino was discovered to be in the possession of Xanax and Suboxone. Gambino was charged for Criminal Possession of a Controlled Substance 5th, Knowingly Make/Possess Dangerous Contraband in Prison 1st, Tampering with Physical Evidence, and Possession of Controlled Substance in a non-original container. He was detained in the Genesee County Jail without bail.

3. Gambino reported he was removed from his home as a child. Gambino stated he lived in High Meadows Institution and Newington Children's Hospital in Connecticut. He also stated he was in foster care placement.

[REDACTED] Gambino stated he had delayed speech and walking as a child. He also reported attending special education classes and achieved a sixth grade education while in school.

- 4.

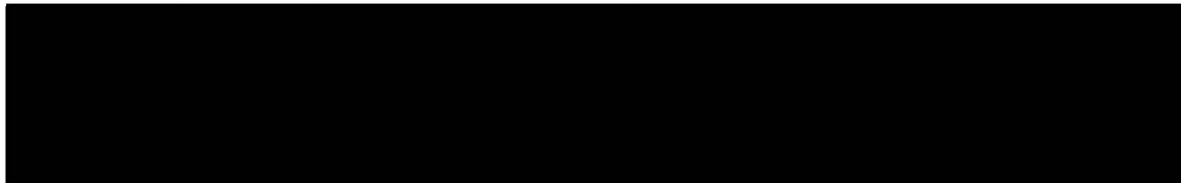
[REDACTED]



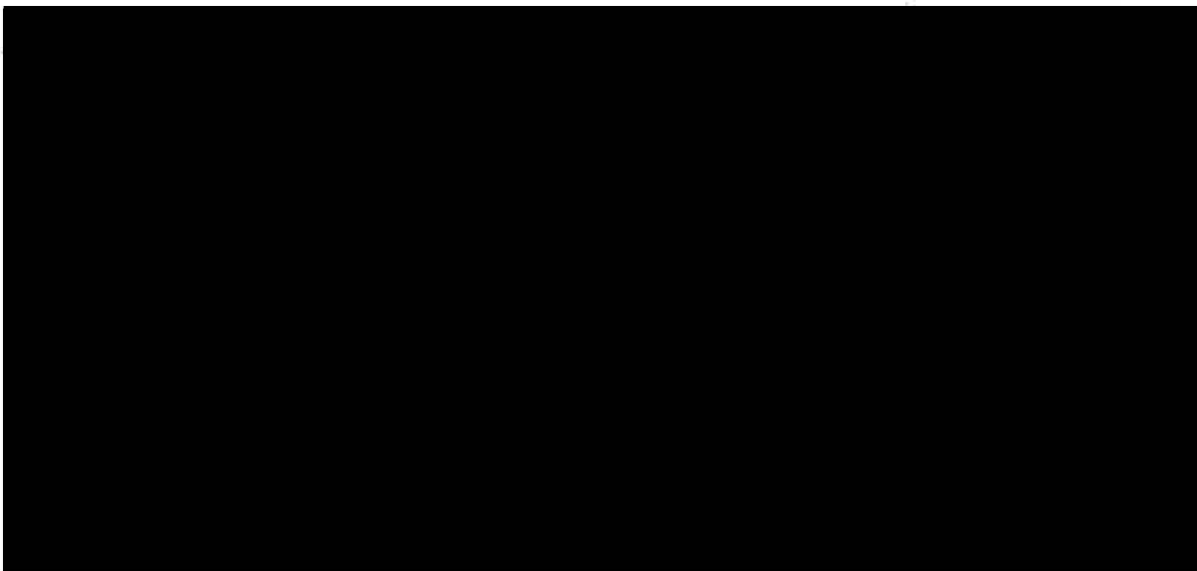
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8. According to Genesee County Sheriff's documentation on 6/6/11, RN T.B. received an e-mail from Superintendent R.G. who notified the nurse that Gambino's attorney, M.W., would be in contact with her with regard to Gambino's medical issues and medications. Gambino was sentenced to 59 days in the custody of the Genesee County Sheriff's Department for his charge of Criminal Impersonation 2nd. Gambino was to serve his sentence on an intermittent basis. Intermittent sentencing is an inmate serving his jail time in blocks of days, e.g., weekends. On 6/7/11, attorney M.W. arrived at the jail with a list of prescription medications for Gambino, [REDACTED] RN T.B. informed attorney M.W. that Gambino would not be prescribed [REDACTED] which are controlled medications, during his intermittent sentence at the Genesee County Jail. There is no jail policy to document such. Both Genesee County Medical Director Dr. G.S. and NP H.M. were not contacted regarding this decision. RN T.B. acted out of her scope of practice as a registered nurse to make such a determination. This practice of abrupt discontinuance of a benzodiazepine, when taken regularly, will cause a significant withdrawal syndrome which includes tremor, headache, tachycardia, palpitations, difficulty in ambulating, hot/cold sweats, and generalized myalgia. As the withdrawal progresses, hallucinations are present, full delirium with disorientation, and seizure activity will occur. Presently, the Genesee County Jail does not have a benzodiazepine withdrawal protocol in place. The Genesee County Jail's Medical Director, Dr. G.S., stated he was not involved in the formulation of the jail's present withdrawal policies which include an alcohol, opiate, and drug abstinence syndromes protocol.

9.



[REDACTED]

A review of literature indicates that Tramadol administered with Suboxone (buprenorphine/naloxone) can cause a serious drug reaction and recommends that an alternative medication be prescribed. Patients receiving scheduled prescribed Suboxone maintenance with the administration of Tramadol could worsen their opiate withdrawal. Suboxone has a half-life from 20 to 70 hours. Genesee County Jail's opiate withdrawal procedure is inadequate as there is no direction on completing regular Clinical Opiate Withdrawal Scale (COWS) assessments to keep an accurate and updated account of a patient's withdrawal status.

10.

[REDACTED]

11. On 6/13/11 at 4:52 p.m., Gambino arrived at the Genesee County Jail to serve his first intermittent sentence segment. At 6:41 p.m., Senior Correction Officer W.Z. completed a Suicide Prevention Screening Form, scoring Gambino with a "0" for all negative answers.

[REDACTED]

12.

[REDACTED]

[REDACTED]

13.

[REDACTED]

14.

[REDACTED]

In reviewing the Genesee County Jail Opiate Withdrawal protocol, there is no direction on how often to complete COWS assessment by health services staff.

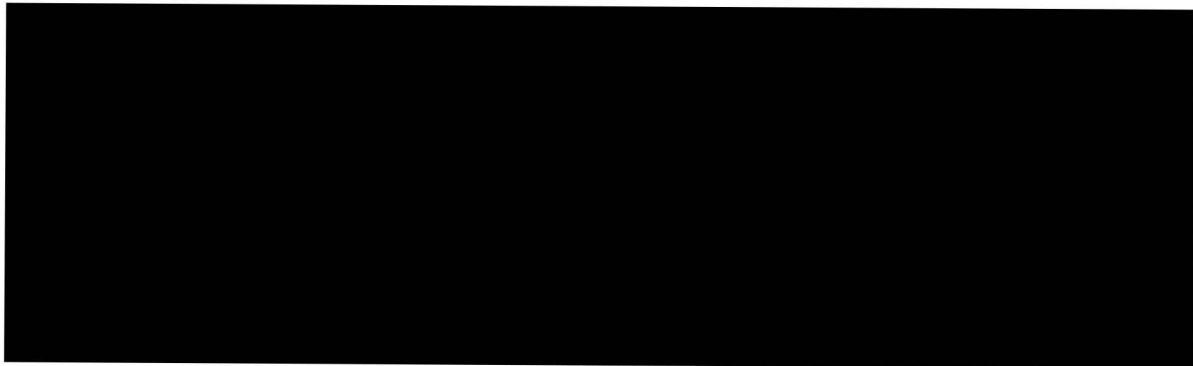
15.

[REDACTED]

On 6/15/11 at 6:04 p.m., Gambino was released back to the community as his first intermittent sentence time was finished.

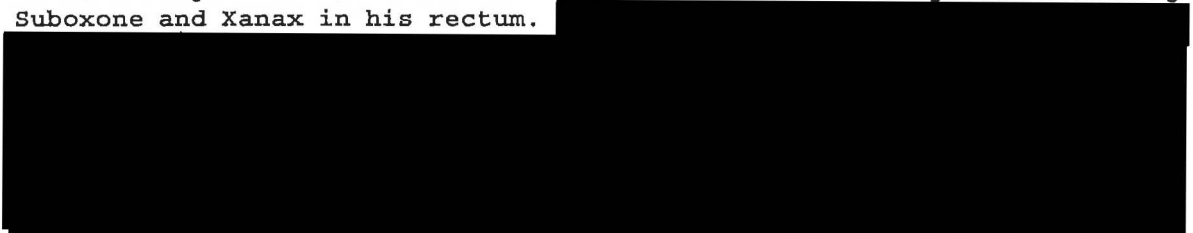
16.

[REDACTED]



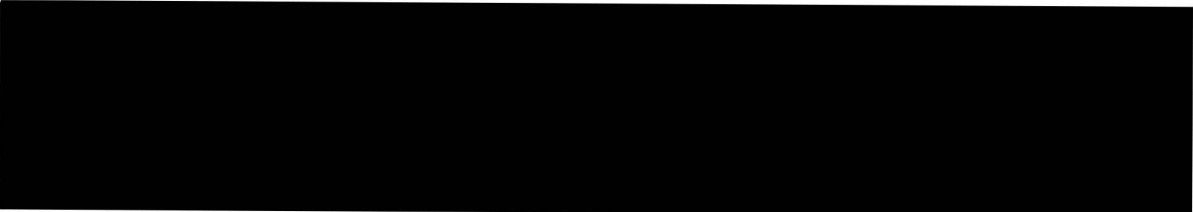
17. On 6/20/11 at 5:52 p.m., Gambino reported to the Genesee County Jail to serve his second intermittent sentence. He was released on 6/22/11 at 6:05 p.m. In reviewing Gambino's housing unit log and medical record, there is no documentation of any medical, behavioral, or security issues for these days.

18. According to Genesee County Jail documentation on 6/21/11 at 12:15 p.m., an inmate informed security staff that multiple inmates with intermittent sentences were bringing in contraband in the form of prescription medication to the Genesee County Jail. Xanax pills were found in the possession of another inmate. On 6/27/11 at 6:09 p.m., Gambino reported to his third intermittent sentence at the Genesee County Jail. The Genesee County Sheriff's Department had obtained a search warrant for a body cavity search on Gambino. On 6/27/11 at 9:40 p.m., Gambino was seen at United Memorial Medical Center for a body cavity search. The correction officers reported to Dr. S.C., the ED physician, that Gambino was known to be "smuggling" drugs in the Genesee County Jail for his weekend stays. Dr. S.C. was informed that Gambino had a glove containing Suboxone and Xanax in his rectum.



On 6/28/11, Gambino was arraigned in Genesee County Court for his additional charges of possession of contraband and was held in the Genesee County Jail without bail.

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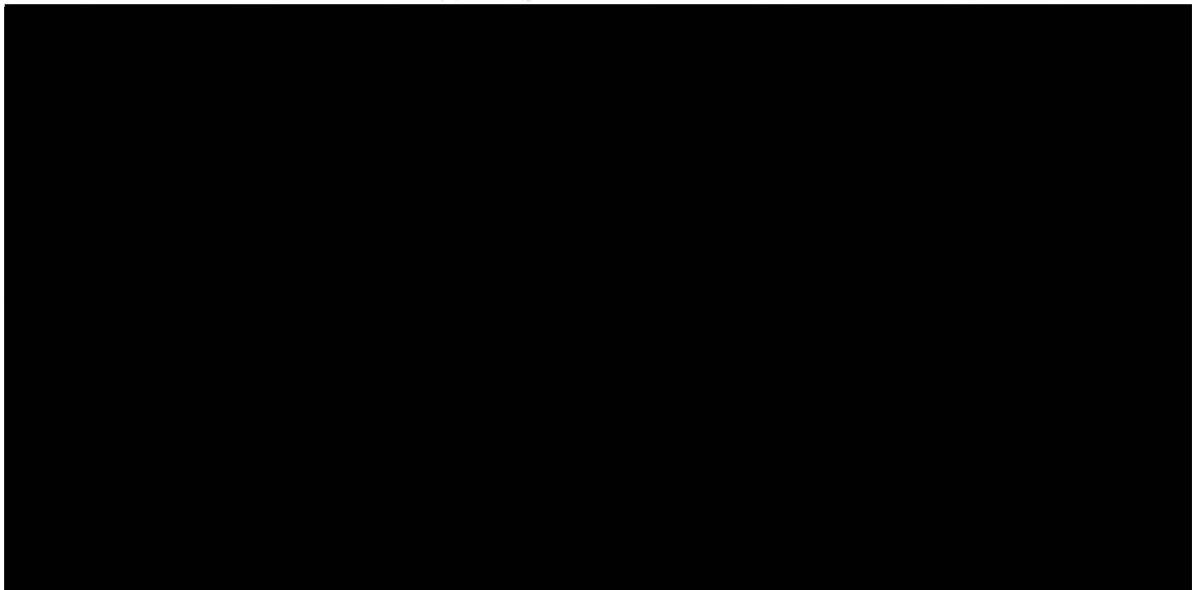
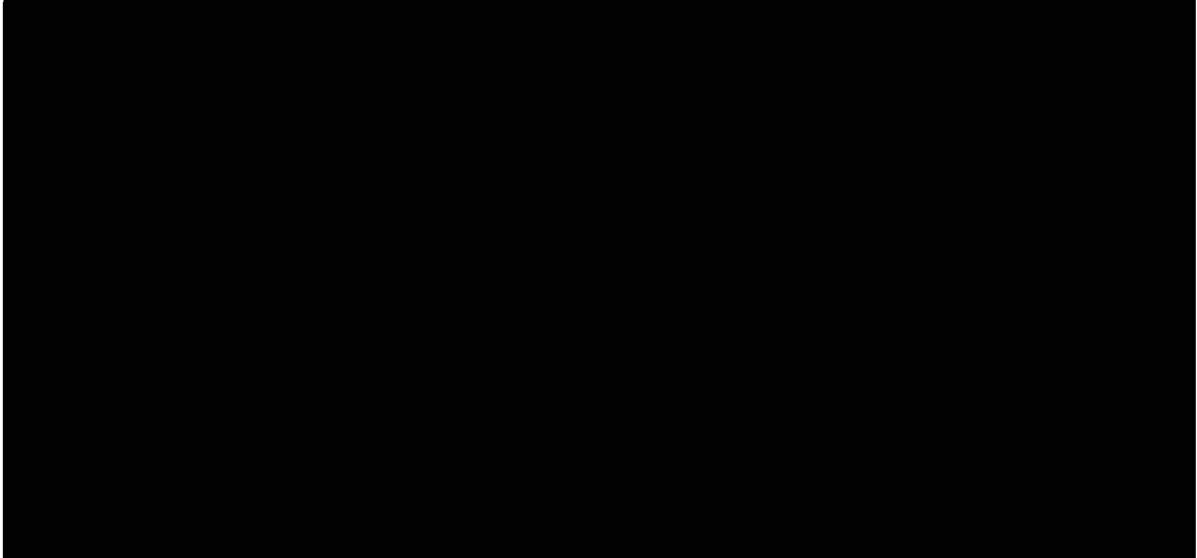


20. On 6/29/11 at 8:00 p.m., Gambino's Suicide Screening Prevention Form was completed by Officer W.Z. Gambino gave all negative answers to questions the officer asked with a resulting score of "0" indicating he had no suicide risk factors. However, Gambino gave negative responses regarding having a psychiatric history and a history of drug use inconsistent with his previous established history. Officer W.Z. wrote a statement

regarding Gambino's admission interview on 6/29/11 which stated the following:

Nikko Gambino was brought into the facility on 6/29/11 at 8:40 p.m. by Deputy D. following arraignment in Batavia Town Court by Justice C. for Batavia City Court on a charge of Promoting Prison Contraband 1st. Justice C. ordered the subject held without bail with a return date scheduled for July 7th at 1300 (1:00 p.m.) in Batavia City Court.

21.



22. On 7/4/11 at 6:35 p.m. according to the security log, Officer K.C. reported Gambino was observed yelling for an "angel." At 7:00 p.m., Gambino was rattling his cell bars and going into another inmate's cell. Senior Correction Officer K.W. was advised. At 7:30 p.m., Officer K.W. came to Gambino's cell and Gambino was double locked for his safety. Officer K.C. completed a Genesee County Jail General Incident Report which stated:

"On 7/4/11 at approximately 7:15 p.m. while working the first floor, Inmate Nikko Gambino was yelling out for people who were not there, rattling the cell bars, and going into other inmates' cells. For his safety he was double locked without any further incident. Officer W. was present when he was locked in. This could be the beginning of drug withdraw(al)."

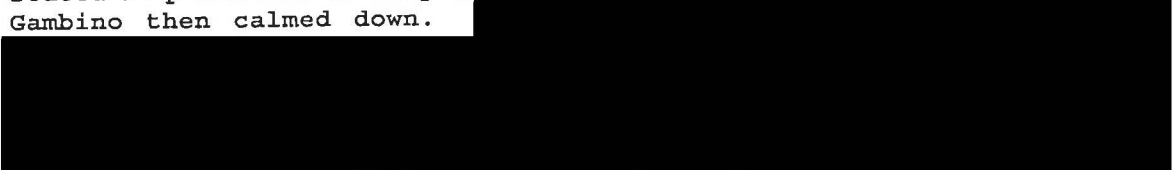
23. On 7/5/11 at 10:45 p.m., Officer B. assumed duty of Gambino's housing unit. On 7/6/11 at 3:30 a.m., Officer B. completed an entry in the security log which reported Gambino was talking incoherently. At 5:30 a.m., Officer B. made a security log notation which stated "Gambino refused his medication" and "was talking incoherently." If an inmate complains or is observed having auditory or visual hallucinations, having tremors or "shakes," sweating, nervous, pacing and/or fidgety behavior and is disoriented, an immediate referral to medical staff should be made and the inmate placed on constant supervision. Prudent actions required for Gambino would be immediate placement on constant supervision, the facility physician notified, and arrangements made to transport to the hospital. This is a violation of the NYS Commission of Correction's Minimum Standards, §7003.3(h) which states:

(h) The chief administrative officer and/or the facility physician shall determine whether a prisoner requires additional supervision based on the prisoner's condition, illness or injury, and the chief administrative officer shall order such supervision if warranted. Additional supervision may include:

- (1) more frequent supervisory visits;
- (2) active supervision when only general supervision is required; or
- (3) constant supervision.

24. On 7/6/11 at 7:00 a.m., Officer P.M. reported to Gambino's housing unit, 1 N/E housing, to assume his duty. Officer P.M. stated that, between the hours of 7:00 a.m. and 9:00 a.m., he observed fecal matter on Gambino's clothes and toilet. There was also some type of stain on his cell walls. Gambino was sitting upright on his bed. Senior Correction Officer R.Z. told Officer P.M. to move Gambino so his cell could be cleaned. Gambino reported to Officer P.M. that he was at a house on the beach. He reported to the correction officer he didn't want to leave, as the "sand" would get him. Officer D.K. was assigned to escort Gambino to Housing Unit 1 south/east (S/E), cell #1, his newly assigned housing unit. When Officer D.K. entered Gambino's cell to retrieve him, he observed Gambino lying on the floor, with feces on him, talking to himself, with his clothes in the toilet. Officer D.K. also observed Gambino speaking into an "imaginary" cell phone. Officer D.K. asked Officer P.M. to assist him. Officer P.M. was able to speak to Gambino, got him on his feet and walked him to S/E cellblock. Officer P.M. observed Gambino walking slowly and methodically. The officer observed Gambino talking about being sucked into the sand. Officer P.M. reported Gambino was obviously hallucinating. The security log noted that on 7/6/11 at 8:30 a.m. Gambino was moved to 1 S/E cell #1 with the comment "double-locked." Inmate T.H. was in cell #2 and in cell #3 was inmate M.Z. Officer P.M. stated he notified RN T.B. about Gambino's mental status while she was administering medications on the housing unit.
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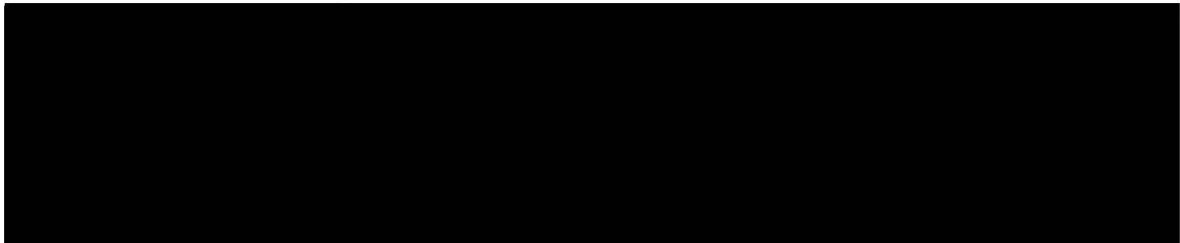
25. According to the security log on 7/7/11 (Thursday), Officer P.M. was the day officer for Gambino's housing unit. His security log book entry reported at 10:30 a.m. that Gambino was transported to court. Officer P.M. stated Gambino was escorted by Deputy J.H. Gambino returned from court at approximately 12:00 p.m. Deputy J.H. stated Gambino became incoherent and agitated during his court appearance and Deputy J.H. called and asked for assistance with Gambino who was returning from court. Deputy J.H. stated that Gambino walked up the stairs where his cuffs and shackles were removed. Senior Correction Officer R.Z. requested that the nurse, RN T.B., be notified. Officer D.K. stated that he saw RN T.B. get Gambino into a wheelchair and Officer P.M., RN T.B., and himself wheeled Gambino back into the S/E housing area. Officer P.M. stated that when they returned to Gambino's housing unit door, Gambino started to brush away spiders he thought were crawling on his body. Gambino was saying "get them off of me." He continued to swat at the imagined spiders. Officer P.M. stated that Gambino slowly slouched to the floor, then fell on the floor. Gambino continued to brush away the spiders. Officer P.M. stated he pretended to step on Gambino's imagined spiders to kill them and Gambino then calmed down.



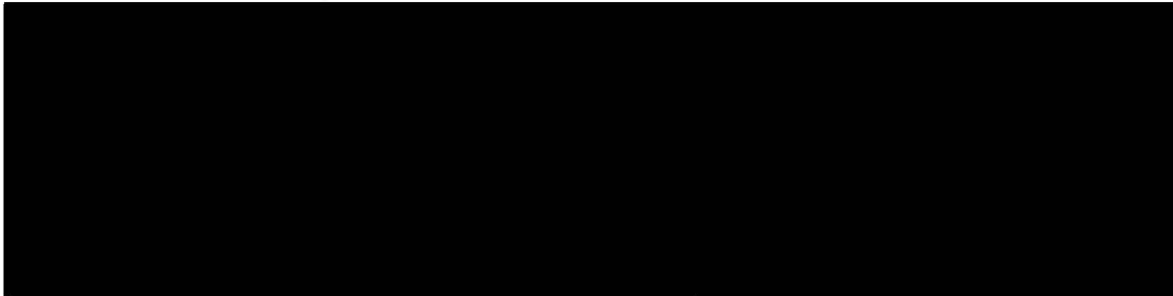
Officer P.M. assisted Gambino to his bunk. Officer D.K. reported that RN T.B. stated Gambino was fine and okay where he was.



26.



27.



There is a written referral process in place for Genesee County Mental Health appointments or evaluations by their clinicians.



28. On 7/8/11 at 7:00 a.m., Officer D.K. reported to duty as the housing officer on Gambino's (South/East) housing unit. Officer D.K. stated

Gambino was in his cell and was sleeping on his bunk when the officer completed his supervisory rounds in the morning. Officer D.K. stated his first verbal interaction with Gambino occurred during the noontime medication pass. At approximately 12:15 p.m., Officer D.K. spoke to Gambino through the catwalk bars and then proceeded to enter Gambino's cellblock and went directly to his cell door. Gambino did not speak with Officer D.K. but gestured that he was alright and got up from his bunk. Officer D.K. stated that it was not unusual for Gambino not to speak. Gambino walked to his cell door. Officer D.K. observed Gambino peeling off the foil from his juice container. [REDACTED]

[REDACTED] Officer D.K. observed Gambino sit back on his bunk. Officer D.K. stated when he left Gambino's cell, he observed him sitting on his bunk.

29. On 7/8/11 at approximately 2:00 p.m., Officer L.A. was in the process of escorting inmates to and from the visiting room when she was stopped by the 1 S/E area (Gambino's housing block) inmates. Officer L.A. identified these inmates as T.H. and M.Z., Gambino's housing unit mates. They stated to Officer L.A. that Gambino was having a possible seizure. Officer L.A. observed Gambino mildly shaking in his bunk. Officer L.A. observed that Gambino's eyes were glossy as he sat up. Officer L.A. stated she notified Officer W.Z. and reported her concerns regarding Gambino. Officer L.A. observed Gambino had moved from his bunk, slid to the floor, and was lying on his stomach with his head close to the gate. Officer L.A. also reported this to Officer W.Z. Officer W.Z. requested Officers D.K. and R.M. go see Gambino, to which they complied. Officer W.Z. relieved Officer D.K. in the control room while he left to see Gambino. Officer R.M. stated that, since he is an advanced EMT, he is often called on to check on sick or injured inmates. Officer R.M. found Gambino lying on the floor on his stomach. Officer R.M. spoke with Gambino through the cell gate and asked if he was okay. Gambino responded with a "eh." Officer L.A. stated she observed Gambino lift his head off the cell floor while Officer R.M. was interacting with him. Officer L.A. stated she observed a yellow stain on the back of Gambino's boxer shorts when he was lying on the floor. Officer P.H. then relieved Officer W.Z. in the control room, who then went to Gambino's cell. Officer W.Z. looked into Gambino's cell and observed him lying on his stomach on the floor. Officer W.Z. stated Gambino was in a position similar to a push-up with his head off the floor and he was making sounds so he was breathing. Officer W.Z. went back to the control room to speak with Officer R.M. Officer R.M. reported Gambino was acting the same as he had been for the past few days. Gambino's color was good and he was breathing freely. Officer R.M. stated, due to Gambino's withdrawals, the safest place for him was on the floor. Officer R.M. determined that Gambino did not need any further medical assistance and reported such to Officer W.Z.
30. Officer D.K. reported that inmates M.Z. and T.H., who were in the cells next to Gambino, had stated that they did not want to be housed with him as they felt responsible for him and were uncomfortable with that. After Officer R.M. left the cell block, Officer D.K. asked inmate T.H. why he had not rung the emergency bell if he felt that Gambino was in trouble. Inmate T.H. stated he did not want to get into trouble for hitting the button. Officer D.K. stated he assured the inmate that he would not get in trouble for pushing the button in the event of having a legitimate concern with another inmate.

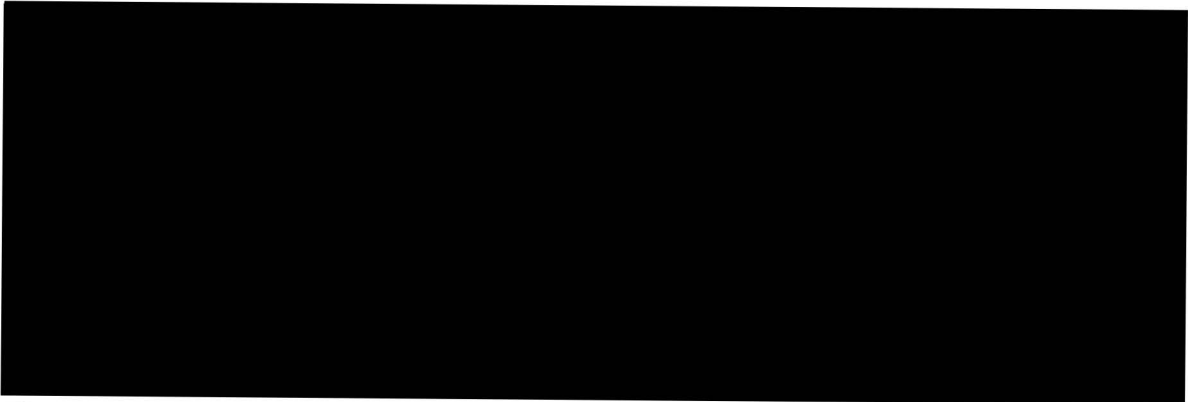
31. According to the security log on 7/8/11 at 2:24 p.m., Officer D.K. was conducting a security round when he observed Gambino lying on his stomach on the cell floor with his head at the door of his cell (#1) and not moving. Officer D.K. called Officers W.Z. and R.M. for assistance. Officers W.Z. and R.M. responded almost immediately. Officer W.Z. observed Gambino lying on his stomach on the floor. The officers moved Gambino to his back. Officer W.Z. reported that Gambino was not breathing nor was his pulse detectable. Officer W.Z. called for an ambulance, the AED, and a bag valve mask, which Officer D.K. retrieved from the second floor. Officer D.K. saw Officer P.M. and offered to relieve him from his duties to take the emergency equipment to Gambino's cell. Officer D.K. stated his reasoning was Officer P.M. was a certified EMT and would be more of an asset than him in the resuscitation efforts. Officer R.M. initiated CPR on Gambino in his cell. Officer P.M. arrived with the AED and bag valve mask. He attached the AED to Gambino which reported "check pulse and continue CPR." Officer P.M. palpitated Gambino's carotid pulse which he described as a brachycardia rhythm. Officer R.M. also was able to palpitate a weak bradycardic pulse in Gambino's wrist.

32.



33.





RECOMMENDATIONS:

TO THE OFFICE OF THE GENESEE COUNTY SHERIFF:

1. The Office of the Genesee County Sheriff shall comply with the NYS Commission of Correction's Minimum Standards, §7003.3(h) which states:

(h) The chief administrative officer and/or the facility physician shall determine whether a prisoner requires additional supervision based on the prisoner's condition, illness or injury, and the chief administrative officer shall order such supervision if warranted. Additional supervision may include:

- (1) more frequent supervisory visits;
- (2) active supervision when only general supervision is required; or
- (3) constant supervision.

The Office of the Sheriff shall direct the security and medical staff to initiate constant supervision on inmates who are observed having hallucinations and/or altered mental status or seizures.

2. The Office of the Sheriff shall cause an inquiry to be conducted and its results, along with action taken, reported to the Medical Review Board, into the failures of medical staff at the Genesee County Jail on the part of the facility Medical Director, Nurse Practitioner and Registered Professional Nurse to adequately communicate vital clinical information and to evaluate, assess and treat Nikki Gambino, [REDACTED]

[REDACTED] specifically:

- a. Failure of medical supervision and oversight by the long-standing but essentially absentee physician/Medical Director;
- b. Failure of the Medical Director to develop a treatment plan [REDACTED] despite being informed specifically that this inmate was at risk and would require same;
- c. Failure of the Nurse Practitioner to supervise subordinate practitioners at the facility and to assure a quality clinical plan;
- d. Failures to administer prescribed medication [REDACTED] indiscriminate preparation of prescription forms by the registered professional nurse for blanket physician approval; administration of medications other than those prescribed [REDACTED]; administration of specific medications following explicit notice by

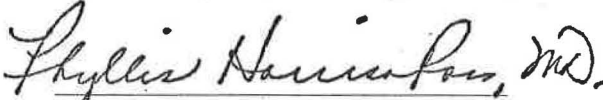
the inmate's personal physician that they were contraindicated and potentially harmful; nursing failure to notify physician/Nurse Practitioner that patient refused medication [REDACTED] in a patient exhibiting clinical deterioration;

- e. Failure of the nursing staff to recognize florid signs and symptoms of worsening acute withdrawal which were objectively measured (COWS), clinically described and documented over several days resulting in death, and failure to provide acute treatment;
 - f. Investigate the gross failure of clinical examination assessment of an acutely ill pre-terminal seizure patient by acknowledged ALS provider CO R.M. on 7/8/11 who admittedly exercises those advanced provider skills in that setting.
3. The Office of the Sheriff shall direct Genesee County Jail medical providers to develop a comprehensive policy and procedure specific to benzodiazepine withdrawal with consultation of a physician with a specialty in addiction medicine, which will include and is not limited to:
- a. To identify inmates who are high risk to develop significant withdrawal syndrome and/or seizures; and
 - b. To develop a protocol to safely manage inmates who are at high risk to develop significant withdrawal syndrome and/or seizures.
4. The Office of the Sheriff shall direct Genesee County Jail medical providers to develop a comprehensive policy and procedure specific to opiate withdrawal protocol with attention to inmates who used Suboxone in the community in consultation with a physician with a specialty in addiction medicine and the completing of regularly scheduled withdrawal assessments.

TO THE NYS EDUCATION DEPARTMENT, OFFICE OF THE PROFESSIONS, OFFICE OF PROFESSIONAL DISCIPLINE:

That the Office of Professional Discipline conduct an investigation into the professional conduct of Registered Nurse T.B. for malpractice, gross incompetence, gross negligence, and failure to maintain an accurate medical record for Nikki Gambino while he was incarcerated at the Genesee County Correctional Facility.

WITNESS, HONORABLE PHYLLIS HARRISON-ROSS, M.D., Commissioner, NYS Commission of Correction, Alfred E. Smith State Office Building, 80 South Swan Street, 12th Floor, in the City of Albany, New York 12210 this 19th day of March, 2013.


Phyllis Harrison-Ross, M.D.
Commissioner