



**Commission of
Correction**

**Final Report of the
New York State Commission of Correction:**

In the Matter of the Death of

**Marie Soldato,
an incarcerated individual of the
Herkimer County Jail**

September 27, 2023

**To: Sheriff Scott Scherer
Herkimer County Sheriff's Office
320 N. Main Street
Herkimer, New York 13350**

Allen Riley
Chairman

Yolanda Canty
Commissioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] During interview with Commission staff, RN [REDACTED] stated that [REDACTED] however, the medical charting system does not reflect a comprehensive review of systems.

5. [REDACTED]
[REDACTED]

6. On 3/17/22 at 4:03 a.m., per the facility shift log entry, Sgt. B.H., Correction Officer (CO) Z., and CO K. were on the housing unit to check on Soldato due to complaints of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] During an interview with Commission staff, RN [REDACTED] stated that if someone's blood pressure is below a certain number, then Clonidine would not be given. RN [REDACTED] added that [REDACTED] generally when one's blood pressure runs low, they do not medicate with Clonidine in order to avoid the risk of the individual passing out. [REDACTED]
[REDACTED] The Medical Review Board finds that there was a lack of clarity regarding the parameters for administering or withholding Clonidine and a consultation with the jail physician should have been initiated.

8. On 3/17/22 at 9:08 a.m., per the facility shift log entry, Soldato was moved into a program room [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

9. On 3/17/22 at 9:21 a.m., per the facility shift log entry by CO J.W., Incarcerated Individual (I.I.) T. gave CO H.P. a sleeve of townhouse crackers to give to Soldato to ease her stomach.

10. [REDACTED]

11. On 3/17/22 at 11:26 a.m., per the facility shift log entry, Soldato refused her meal tray.

12. On 3/17/22 at 5:11 p.m., per the facility shift log entry, Soldato defecated in her pants and was showering.

13. On 3/17/22 at 5:21 p.m., per the facility shift log entry, two incarcerated individuals were cleaning Soldato's cell and a white pill was found in Soldato's cell. Sgt. R.M. and Sgt. K.V. were notified and took possession of the pill. The pill was brought to RN [REDACTED] who identified the pill as Zofran [REDACTED]. [REDACTED] Soldato was advised that she would receive a disciplinary write-up for the pill found in her cell.

14. [REDACTED]

15. On 3/18/22 at 1:55 a.m., per the facility shift log entry, Soldato was heard screaming for help. Soldato stated that she needed to call Beacon for Methadone. This request was denied by CO A.A. During an interview with Commission staff, CO A.A. stated that she did not relay this request to a supervisor or to medical. CO A.A. stated that medical was not at the facility at that time of the morning. During an interview with Commission staff, RN [REDACTED] stated that she was not informed of this incident.

16. On 3/18/22 at 3:01 a.m., while completing a supervisory tour, Soldato asked CO D.D. if she could go to the sub-dayroom. Soldato stated that it was hard to breathe in her cell.

Soldato was informed that the air in the sub-dayroom is exactly the same as the air in her cell and that she was not permitted to go out. Soldato then was standing at her cell door crying. During an interview with Commission staff, RN [REDACTED] stated that she was not informed of this incident.

17. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Medical Review Board opines that the nurse failed to adequately assess Soldato's claims of stomach pain and failed to make a notification to the jail physician.
18. On 3/18/22 at 11:14 a.m., per the facility shift log entry, while conducting supervisory tour, CO J.W. noticed feces all over Soldato's cell floor and her cell's glass door. The sergeant was notified.
19. On 3/18/22 at 12:08 p.m., per the facility shift log entry, CO N.J. was informed by I.I. T. that Soldato was rubbing her bare buttocks against the cell door and the inside of the doorway may have feces smeared on it.
20. On 3/18/22 at 12:41 p.m., per the facility shift log entry, Soldato refused her meal tray.
21. On 3/18/22 at 12:44 p.m., per the facility shift log entry, CO J.W. provided Soldato with a red biohazard bag and paper towels to clean up the feces that was all over her cell. During the 1:00 p.m. supervisory tour, CO J.W. noted that Soldato was not complying with orders to clean the feces and Sgt. M.M. was notified. At 1:19 p.m., CO J.W. was notified by an unidentified incarcerated individual that Soldato was touching her genitalia in front of the glass while fully naked. Soldato was ordered to stop. CO J.W. noted that Soldato had not cleaned the feces in her cell.
22. On 3/18/22 at approximately 2:00 p.m., Sgt. M.M. CO H.P., CO J.R., and CO C.K. entered the housing area. CO H.P. went into sub day room two and ordered Soldato to clean up the feces on her cell floor and herself and to put clothes on several times. Soldato refused multiple times and reportedly remained seated on her bunk not responding to the verbal commands from the officer. At approximately 2:02 p.m., CO H.P. sprayed Soldato with one, one second burst of Oleoresin Capsicum (OC) spray. During an interview with Commission staff, Sgt. M.M. stated that CO H.P. entered Soldato's cell in an attempt to remove her from the cell in order to shower. Soldato was acting erratically while walking towards CO H.P. CO H.P. had the belief that Soldato was going to wipe feces on CO H.P. As a result, OC spray was deployed. Sgt. M.M. added that CO H.P. gave instructions to Soldato to shower to which Soldato did not respond. CO H.P. instructed Soldato to stop walking towards her and Soldato did not, however no physical contact was made between Soldato and CO H.P. When asked how Soldato was refusing to clean her cell, Sgt. M.M. stated that Soldato shook her head no and then

began to walk toward CO H.P. During an interview with Commission staff, CO J.W. stated that the use of OC spray was authorized by Sgt. M.M. after Soldato refused all orders to put clothing on in order to be escorted to the shower for decontamination from feces. CO H.P. stated that she ordered Soldato to clean her cell and herself and to get clothes on. Soldato didn't say anything and looked at CO H.P. with no acknowledgement to what was said. CO H.P. gave the same order again and Soldato stood up to approach the officers. CO H.P. stated that while Soldato was approaching the officer, Soldato was ordered to stop. Soldato sat back on her bunk and OC spray was deployed. During an interview with Commission staff, CO H.P. stated that when Soldato first stood up, she felt that Soldato was coming at her with feces on her hands and not communicating or following orders. At 2:06 p.m., Soldato was decontaminated in the shower. [REDACTED]

[REDACTED] The Medical Review Board finds that the use of the chemical agents (OC spray) in this instance was not in comportment with the requirements of 9 NYCRR §7063.3(c) Authorization for the use of chemical agents and 7063.4 Use of chemical agents. (a), which state:

7063.3(c) In emergency cases, when a delay in the use of chemical agents presents an immediate threat of death or serious injury or severely threatens the safety or security of the correctional facility, facility staff trained in the use of chemical agents shall have the authority to use chemical agents without authorization.

7063.4(a) Chemical agents shall not be used as a means of punishment.

The incident as documented in all reviewed reports provided to the Commission and from the statements provided to Commission staff during the investigation fails to establish where an immediate threat to the safety and security of the facility occurred whereby an immediate use of chemical agents was necessary to maintain order and/or to prevent injury. The reviewed information was indicative that the deployment of the chemical agents was in response to Soldato's failure to follow commands. The documented observations indicate that Soldato was showing signs of an altered mental status which needed to be reported to medical.

23. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] The Medical Review Board opines that the delay in advisement of Soldato's symptoms was detrimental to Soldato.

24. On 3/18/22 at 6:39 p.m., per the facility shift log entry, Soldato was not wearing any clothing.

25. [REDACTED]
 [REDACTED]

26. On 3/18/22 at 7:30 p.m., per the facility shift log entry, Soldato had placed an article of clothing in her toilet and was given orders to remove the clothing. Soldato complied with the orders to remove it.

27. On 3/18/22 at 9:50 p.m., per the facility shift log entry, while conducting supervisory tour CO A.H. noticed a pile of feces on the floor of Soldato's cell. Soldato was ordered to clean the feces off the floor and Sgt. K.V. was notified.
28. On 3/18/22 at 10:19 p.m., per the facility shift log entry, Sgt. K.V., Sgt. R.M., and Sgt. H. entered the housing unit and ordered Soldato to clean the feces from the cell floor. Soldato complied with the order. Soldato was issued new clothing and she was ordered to dress properly. Soldato was moved to cell B12 while cell B13 was cleaned, disinfected and the toilet that Soldato had clogged was unclogged.
29. On 3/18/22 at 11:54 p.m., per the facility shift log entry, Soldato defecated on the cell floor. Soldato complied with the cleanup order and was provided new clothes.
30. On 3/19/22 at 3:42 a.m., per the facility shift log entry, Soldato urinated and defecated on the floor in her cell and was ordered to clean up the floor. The sergeant was notified. Soldato did not comply with the order to clean up the cell floor. At 4:26 a.m., CO A.R. observed Soldato with her hands in her buttock and feces on her hands.
31. On 3/19/22 at 5:27 a.m., per the facility shift log entry, Soldato was provided more wipes and a red biohazard bag as she defecated on her cell floor. At 6:03 a.m., CO M.H. heard Soldato's toilet flush and Soldato was observed standing at her sink.
32. On 3/19/22 between 8:15 a.m. and 8:30 a.m., per the facility shift log entry, CO A.A. ordered Soldato to put clothes on multiple times. During an interview with Commission staff, CO A.A. stated that she would have to tell Soldato multiple times at each interaction as it would take time for Soldato to react to orders.
33. On 3/19/22 at 9:48 a.m., per the facility shift log entry, CO A.A., CO O.B., and CO J.R. assisted Soldato to shower as Soldato was covered in feces. Soldato was moved to cell B 13 due to the feces in her cell. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] During an interview with Commission staff, CO A.A. stated that Soldato seemed to be incoherent. CO A.A. stated that Soldato was told to clean feces from herself and she didn't seem to understand what was said. CO A.A. stated that this behavior was witnessed by RN [REDACTED] CO A.A. stated that she voiced her concerns to RN [REDACTED] regarding Soldato's' behavior and RN [REDACTED] did not respond to the observations that were reported. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] During an interview with Commission staff, CO J.W. stated that she and RN [REDACTED] entered Soldato's cell but no physical exam was performed at that time. CO J.W. stated that RN [REDACTED] asked Soldato if she was drinking water and if Soldato had either ingested or inserted contraband inside of herself. Soldato adamantly denied that she had. CO J.W. stated that RN [REDACTED] had not indicated that she would be back for any reason other than the regularly scheduled medication pass. During an interview with Commission staff, RN [REDACTED] stated that she was in the housing unit for medication pass and was informed by the officer that Soldato had been yelling out. [REDACTED]

[REDACTED]

[REDACTED] RN [REDACTED] stated to Commissions staff that she would have come back to see Soldato after dinner around the next medication pass. Per the medication administration record, the next timed medication pass for Soldato would have been at 7:00 p.m. The Medical Review Board opines that RN [REDACTED] failed to adequately assess Soldato's reports of stomach pain. Had a proper assessment been completed, clinical indicators of Soldato's progressively worsening condition could have been identified with an opportunity to obtain a transfer to an emergency room for treatment.

- 42. On 3/19/22 at 3:31 p.m., per the facility shift log entry, CO J.W. completed supervisory tour. During an interview with Commission staff, CO J.W. stated that during this watch tour, she stood at Soldato's cell door for a minute or two before getting affirmation from Soldato in the form of a head nod and Soldato stating 'yes' to the question "are you okay". CO J.W. stated that Soldato's head was propped against the wall and this was the only difference in her posture that was witnessed from beginning of shift.
- 43. On 3/19/22 at 3:36 p.m., per the facility shift log entry, all of the incarcerated individuals were secured for shift change.
- 44. On 3/19/22 at approximately 3:55 p.m., CO J.W. noticed Soldato's body was limp against the wall with her chin tucked against her chest. Soldato was sitting on the toilet and was drooling. CO J.W. entered Soldato's cell and attempted to arouse Soldato but she was unresponsive. CO J.W. was unable to palpate a pulse. At 3:57 p.m., CO J.W. called a medical emergency prompting response by security and medical. At 4:01 p.m., [REDACTED] and EMS was activated. [REDACTED]

[REDACTED] Herkimer Fire Rescue arrived at the facility. At 4:05 p.m., Mohawk Valley Ambulance Corps (MOVAC) arrived at the facility [REDACTED]

[REDACTED]

45. [REDACTED]

46. [REDACTED]

47. [REDACTED]

ACTIONS REQUIRED:

TO THE HERKIMER COUNTY SHERIFF:

The Sheriff shall conduct a review regarding the use of chemical agents during the incident on 3/18/2022 which involved staff and supervisors. Said review shall include a review of 9 NYCRR Part 7063, Chemical Agents, requirements as well as the Sheriff's Office policy and procedures.

TO THE HERKIMER COUNTY JAIL PHYSICIAN:

The Jail Physician shall conduct a comprehensive quality assurance review of the care provided to Soldato to include:

- a. Why medical staff withheld medication when the vital signs were within the parameters for the medication to be given and failed to notify the provider of the withholding of the medication.
- b. Why medical staff did not perform adequate physical assessments of Soldato's complaints.
- c. Why the medical provider was not notified of Soldato's complaints and presentation.

A report of findings and corrective actions taken shall be provided to Commission upon completion.

A response dated 8/14/23 to the Commission's preliminary report was provided by the Herkimer County Sheriff. The Sheriff indicated that a review was conducted of both the use of chemical agents and the medical care provided to Soldato but primarily disagreed with the Commission's findings. The Commission and the Medical Review Board acknowledge the response, however, remain affirmed in their findings and opinions regarding the care and treatment of Soldato.

TO THE CHAIR OF THE HERKIMER COUNTY LEGISLATURE:

As the appointing authority for the delivery of jail incarcerated individual health services pursuant to Correction Law section 501, the County Legislature shall review the above findings and conduct an inquiry into the fitness of the currently designated provider.

WITNESS, HONORABLE ALLEN RILEY, Chairman, NYS Commission of Correction, Alfred E. Smith State Office Building, 80 South Swan Street, 12th Floor, in the City of Albany, New York 12210 on this 27th day of September, 2023.



Allen Riley
Chairman
Commission of Correction

AR:MB:vc
2022-M-0033
September 27, 2023