

To: Hermitage Capital Management
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William Browder
CEO

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June 28, 2011

Re: Forensic Review of Sergei Magnitsky documents submitted by
Hermitage Fund

PHR/IFP Case #: RUSSEM20101216

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Forensic Pathology Consultant
Coroner/Chief Medical Examiner
El Paso County Coroner's Office
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Physicians for Human Right's International Forensic Program (PHR/IFP) was contacted by Hermitage Capital Management CEO William Browder on December 16th, 2010 requesting a review of documents in their possession relating to the death in custody of their lawyer, Sergei Magnitsky. The independent review was requested by Sergei Magnitsky's mother, Natalia N. Magnitskaya, supported by William Browder. PHR subsequently convened the following experts for review of the documentation:

1. Robert C. Bux, M.D., Coroner/Chief Medical Examiner for the El Paso County Coroner's Office in Colorado Springs, Colorado. A board certified Pathologist in Anatomical, Clinical and Forensic Pathology, his experience includes more than 25 years as a Medical Examiner.
2. Deborah Ascheim, M.D., Associate Professor, Department of Health Evidence & Policy, Cardiovascular Institute, Clinical Director of Research, InCHOIR Mount Sinai School of Medicine, New York, NY; (also a member of PHR's Board of Directors)
3. Robert B. Greifinger, M.D., Professor (adjunct) of Health and Criminal Justice, John Jay College of Criminal Justice, City University of New York

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The following documents submitted to PHR by Hermitage Fund were reviewed in order to identify key irregularities, inconsistencies or gaps in the medical investigations carried out by the Russian authorities into the circumstances and conditions surrounding Mr. Magnitsky's cause and manner of death:

1. Magnitsky medical death certificate Morgue 19 Nov 2009 (ENG)
2. Report by Independent Moscow Public Oversight Commission 28 Dec 2009 (ENG)
3. Autopsy Report 28 Dec 09 (ENG)
4. Post mortem Tests – kidney, blood, liver Dec 09 (ENG)
5. Gystology results post mortem Dec 09 (ENG)
6. Medical Examination by Borzova based on documents, 31 Dec 2009 (ENG)
7. Medical Commission Report by Moscow city experts based on documents, 12 May 2010 (ENG)
8. Cardiological Examination and Explanations 9 June 2010 (ENG)
9. Lomonosova Orders to Conduct New Examinations 22 Sept and 30 Sept 2010 (ENG)
10. Photo of Funeral.JPG
11. Photo of Hand Injury at Funeral 20 Nov 09(ii).JPG
12. Photo of Hand Injury at Funeral 20 Nov 09(i).JPG
13. Photo post mortem of Hand Injury 17 Nov 09.JPG
14. Photo post mortem of Leg Injury 17 Nov 09.JPG
15. Matrosskaya Tishina Diagnosis (14 July 2009) (ENG)
16. Confirmation from Butyrka of medical conditions (11 Nov 2009) (ENG)
17. Magnitsky Death Certificate (19 Nov 2009) (ENG)
18. Letter from Head of Matrosskaya Tishina regarding Magnitsky medical conditions (3 Dec 2009) (ENG)
19. Confirmation of Medical Conditions & seizure of records (4 Dec 2009) (ENG) (Mother's address REDACTED)
20. Complaint on Silchenko's illegal transfer of Magnitsky (6 March 2009) (ENG)
21. Silchenko rejection to Sergei's mother to meet his son 18 June 2009 (ENG)
22. Magnitsky Letter re: Human Meat Grinder (8 Aug 2009) (ENG)
23. Request by Magnitsky's Lawyers for an Ultrasound (19 Aug 2009) (ENG)
24. Silchenko rejection to visit Sergei by his aunt, wife and mother (25 Aug 2009) (ENG)
25. Magnitsky Petition for Medical Help (25 Aug 2009) (ENG)
26. Magnitsky Letter to Lawyers re Medical Help (25 Aug 2009) (ENG)
27. Rejection for Ultrasound Examination by Silchenko (2 Sep 2009) (ENG)
28. Letter from Magnitsky to Silchenko re: Pressure to Falsely Testify (11 Sep 2009) (ENG)
29. Complaint to Anichin about denial of medical care surgery pressure to falsely testify 11 09 09 (ENG)
30. Petition of Khairtonov to Silchenko on Ultra Sound Exam (15 Sep 2009) (ENG)
31. Magnitsky 44-page Complaint on Conditions in Butyrka (18 Sept 2009) (ENG)
32. Magnitsky's Brief Notes on Conditions in Butyrka (20 Sept 2009) (ENG)

33. Magnitsky testimony on conspiracy against him (13 Oct 2009) (ENG)
34. Denial by Silchenko of Ultra Sound Exam (30 Sep 2009) (ENG)
35. Silchenko rejection to change detention measure (28 Oct 2009) (ENG)
36. Magnitsky's Complaint re fabrication of evidence (11 Nov 2009) (ENG)
37. Magnitsky notes for court statement (politically motivated prosecution) (12 Nov 2009) (ENG)
38. Complaint to Head of Butyrka and request for medical attention (13 Nov 2009) (ENG)
39. Magnitsky Complaint re Nocturnal Cell Transfer (13 Nov 2009) (ENG)
40. Magnitsky's Final Complaint to Court (re: falsification of evidence) (13 Nov 2009) (ENG)
41. Request to provide medical conclusion on Magnitsky health (16 Nov 2009) (ENG)
42. Petition to conduct a full investigation into Magnitsky's Death (23 Nov 2009) (ENG)
43. Electrocardiogram graph of ECG done on S.L. Magnitsky (October 21, 2009)
44. "Conclusions of psychiatric examination, 23 November 2010" (ENG)

The question to be answered by the review of this documentation is whether Sergei Magnitsky died as result of heart failure, secondary to cardiomyopathy.

INTRODUCTION

Sergei Magnitsky, a lawyer stationed in Russia for the UK-based investment firm Hermitage Fund, was arrested and jailed on November 24, 2008, charged with tax evasion. This occurred after Magnitsky uncovered an alleged \$230 million tax fraud perpetrated by a group of senior police officers and government officials. Following 358 days in prison under progressively worsening conditions, Magnitsky died on November 16, 2009.

During his detention, he developed and was diagnosed with cholelithiasis and chronic active cholecystopancreatitis. In letters to the authorities and his family he complained about his treatment more than 450 times during the time he was detained.

On the day of his death, November 16, 2009, Magnitsky complained of pain and vomiting, and was transferred from the detention center FBU IZ 77/2 of UFSIN to the hospital of FBU IZ 77/1 of the Russian Corrective Service (UFSIN). There, he was evaluated for his symptoms, thought to be cholecystitis and pancreatitis. At this time, between approximately 6:20pm and 7:30pm, Magnitsky exhibited behavior diagnosed as "acute psychosis" by Dr. A. V. Gaus at which point the doctor ordered Mr. Magnitsky to be restrained with handcuffs. At 7:30pm Gaus called for an emergency psychiatric team to evaluate and treat Mr. Magnitsky. Dr. Gaus did not return to Mr. Magnitsky until 9:20pm, at which time the patient was unconscious. Gaus then ordered his transfer to the intensive care ward, where resuscitation measures were taken. Mr. Magnitsky was pronounced dead at 9:50pm by Gaus.

According to statements made by members of the Psychiatric First-Aid Mobile Team of Moscow, they received a request to attend to a patient at FBU IZ 77/1 of UFSIN at 7:40pm on November 16, 2009. They arrived at the location at 8:00pm, but were not admitted into the detention facility until approximately 9:00pm. Contrary to Gaus' statement, the first-aid team found the victim in a regular jail cell, rather than the medical ward (as per testimonies by Kornilov and Morozov in the 12 May 2010 report). The psychiatrists confirmed his death to have occurred between approximately 9:00 and 9:15pm.

According to the autopsy report and a subsequent investigation conducted by a Medical Commission between February 2, 2010 and May 12, 2010, the cause of death was attributed to acute heart failure with dilated cardiomyopathy. The Medical Commission's report stated: *"At the moment of his death, S.L. Magnitsky had no aggravations of cholelithiasis or pancreatitis (peritonitis, pancreatic abscess, ulcers, decubital ulcers of gall bladder with perforation and hemorrhage, stomach wall and transverse colon necrosis, gastrointestinal hemorrhage and others), individually the specified diseases have no relation to the occurrence of death."*

Following the death of Sergei Magnitsky, several investigatory bodies in Russia were asked to look into the circumstances surrounding his death. These include:

1. A report by the Public Oversight Commission for Human Rights Observance in Moscow Detention Centers, titled "Review of the Conditions of the Detention of Sergei Magnitsky in the Pre-Trial Detention Centers of the City of Moscow" completed on December 28, 2009.
2. A report by the Forensic Medical Examination Office of the Moscow Healthcare Department. Thanatological Department No.11 by A.N. Borzova, completed on December 31st, 2009.
3. A report by the State Budgetary Healthcare Institution of the city of Moscow. Forensic Medical Examination Office of the Moscow Healthcare Department, by a group of eight medical doctors, four of whom are described as forensic experts, completed on May 12, 2010.
4. A report by the Federal Agency for Healthcare and Social Development's Russian Cardiological Research Complex completed by a group of five cardiac specialists on June 9, 2010.
5. A report by the Federal State Institution, the State Research Centre for Social and Forensic Psychiatry under the Ministry of Healthcare and Social Development, by three forensic psychiatrists and one psychologist, completed on November 23, 2010.

SUMMARY OF SIGNIFICANT FINDINGS FROM RUSSIAN REVIEW PROCESSES

1. The report by the Public Oversight Commission for Human Rights Observance includes the following conclusions:

- a. *“Magnitsky had been experiencing both psychological and physical pressure in a detention center, and the conditions in some of the wards of Butyrka can be justifiably called torturous.”*
 - b. *“...it is necessary to determine the role of the investigators [tasked with investigating allegations of tax fraud against Magnitsky] in creating conditions and subjecting Magnitsky to them in detention, and the degree of their responsibility.”*
 - c. The healthcare administration is part of the prosecuting authority and thus prosecutors can routinely deny or withhold medical treatment. Therefore, the healthcare administration needs to be independent and follow guidelines in accordance with international standards.
 - d. The conditions under which Magnitsky was detained in the Russian penitentiary system do not comply with European standards.
 - e. Testimony by detention centre officials and doctors surrounding the last two hours of S.L. Magnitsky’s life is inconsistent and contradictory.
2. The report by the Forensic Medical Examination Office team of May 12, 2010, which includes an examination of the report by A.N. Borzova from December 31st, 2009, includes the following conclusions:
- a. *“The victim had no health problems or aggravations prior to his detention and was diagnosed for the first time with acute cholecystitis, pancreatitis and gallbladder disease while in detention in July 2009.”*
 - b. *“Death of S.L. Magnitsky occurred as the result of acute heart failure induced by secondary dilated cardiomyopathy, which is confirmed by the results of microscopic and micrographic examinations of his corpse.”*
 - c. *“Post mortem showed injuries to victim’s legs and arms (contusions and abrasions)”*
 - d. *“At the moment of his death, S.L. Magnitsky had no aggravations of cholelithiasis or pancreatitis (peritonitis, pancreatic abscess, ulcers, decubital ulcers of gall bladder with perforation and hemorrhage, stomach wall and transverse colon necrosis, gastrointestinal hemorrhage and others), individually the specified diseases have no relation to the occurrence of death.”*
 - e. *“While S.L. Magnitsky was detained at pretrial detention centres IZ 77/1, 77/2, 77/5, professional medical aid was rendered to him in an insufficient volume.”*
 - f. With respect to the prior diagnoses of cholelithiasis and pancreatitis: *“...for the purposes of clarification thereof and determination of further treatment of the patient, required laboratory examinations of blood and urine (determination of quantitative concentration of amylase, bilirubin, liver enzymes: aspartate aminotransferase, alanine aminotransferase, alkaline phosphatase, Gamma- Glutamyl transferase, and the indicators of inflammatory changes in the body, leucocytosis, hemogram shift, etc.), which were not prescribed or performed.”*

- E. The possibility of poisoning by substances other than controlled substances (opiates, barbiturates, etc.) as the cause of the death of S.L. Magnitsky has not been addressed by any of the above-mentioned studies.
- F. The autopsy protocol cited on the first page in the attachments of the Medical Assessment claims that there are “photo tables on 2 sheets” and “schematic representation of injuries on 1 sheet.” However, if they exist, they were not available for the present review. The Minnesota Protocol requires complete photography of the external surfaces of the bodies, as well as both distant or intermediate and close photographs of each injury found¹. At this time it is not possible to determine if this was done.
- G. The puncture wound noted on the tongue should have been removed and submitted for toxicological examination. This was not done according to the autopsy protocol and no toxicological testing was performed as required by the Minnesota Protocol.
- H. The gallbladder was noted to contain gallstones and the gallbladder wall was thickened (an indication of disease). According to the Minnesota Protocol this requires a histological examination, which was not done².
- I. More thorough histological examination of the heart, brain, and lungs should have been completed. According to the Minnesota Protocol, microscopic examination of all of the internal organs should have been performed. However, only the brain, heart, lung, liver and pancreas were examined microscopically³. In this case, microscopic examination of the rest of the internal organs including the spleen, kidneys, thyroid gland, and adrenal glands was not performed. Given the conclusion that Mr. Magnitsky died as a result of a medical problem, all of the internal organs needed to be examined histologically to determine if any other disease processes contributed to his death. The autopsy protocol indicates that samples of brain, lung, heart, coronary artery, liver, kidney, spleen, thyroid gland, and pancreas were retained. These additional samples need to be examined microscopically.
- J. The Electrocardiogram (ECG) reviewed is a poor quality tracing and therefore difficult to evaluate with accuracy. Furthermore, the ECG does not include a scale indicating the amplitude (gain), which is standard for any ECG taken throughout the world. It is therefore not possible to interpret ECG evidence of the enlargement of any cardiac chamber, which may be evident in the presence of a cardiomyopathy, and can therefore neither confirm nor disprove evidence of heart size abnormality. Furthermore, it is not possible to determine whether this ECG resulted from an examination of Mr. Magnitsky.

¹ Minnesota Lawyers International Human Rights Committee, Subcommittee on Inquiry Procedures. *The Minnesota Protocol: Preventing Arbitrary Killing Through an Adequate Death Investigation and Autopsy: A Report of the Minnesota Lawyers International Human Rights Committee, Subcommittee on Inquiry Procedures*. 1987. The Committee, Minneapolis, MN.

² Ibid.

³ Ibid.

- K. The erratic behavior of Magnitsky, as described in some of the testimony documented in the various reports, is not consistent with the “acute psychosis,” diagnosed by Dr. A.V. Gaus. If indeed he exhibited the reported behavior, it would seem to be more consistent with sequelae of toxic shock.
- L. The testimonies documented in some of the reports surrounding the events occurring in the two hours immediately preceding Mr. Magnitsky’s death are inconsistent and contradictory. This casts doubt on reports made as to the condition of his general health, the alleged care he received, his mental state, possible resuscitation measures taken, and the actual cause of death as reported.
- M. Mr. Magnitsky received inadequate medical attention and evaluations for the differential diagnoses of his ongoing symptoms. The neglect was calculated, deliberate and inhumane. He received inadequate medical evaluation and treatment throughout his detention and on the day of his death this continued. There were significant delays on obtaining medical evaluation and treatment by the prison authorities. Although there is conflicting information, it appears that resuscitation at the very least was not timely, if performed correctly at all. If that is the case, the delay may have sealed Mr. Magnitsky's fate. This repeated medical neglect and outright disregard for the well-being of Mr. Magnitsky was undoubtedly a significant factor leading to his death.
- N. Mr. Magnitsky suffered prolonged severe pain, was denied regular contact with his family, denied medical evaluations for his complaints, fed meals irregularly, and kept under inhumane conditions. This cumulative inhumane treatment was also one of the contributing factors leading to his death.

NOTE:

Physicians for Human Rights’ International Forensic Program mobilizes the skills of medical and scientific professionals to investigate human rights violations and violations of international humanitarian law purpose is to produce court admissible evidence based on forensic and scientific best practices. The IFP works with a select group of volunteer forensic scientists on cases which are considered indicative of human rights violations where highest quality forensic expertise is necessary.

PHR’s IFP would welcome the opportunity to conduct such an independent examination should the relevant material be made fully available.