

# OFFICE OF THE DEFENDER GENERAL

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Matthew F. Valerio, Defender General

## EXECUTIVE SUMMARY FOR DISTRIBUTION

FROM: Matthew Valerio, Defender General  
RE: Executive Summary / Investigation of the Death of Kenneth Johnson while in Vermont DOC Custody, Date of Death: December 7, 2019  
DATED: July 20, 2020

## INTRODUCTION

Kenneth Johnson was a black man who died in VT DOC custody on December 7, 2019. Medical and correctional staff ignored his pleas that he could not breathe—an undetected tumor blocked his airway. Instead of providing life-saving care, staff threatened him. Fellow inmates, not nurses, discovered that he had stopped breathing. Mr. Johnson could not be resuscitated and died in DOC custody.

## FACTUAL FINDINGS

- **Kenneth Johnson was a black man** detained awaiting trial at Northern State Correctional Facility in Newport, Vermont, from 2017 until his death in 2019.
- In fall 2019 Mr. Johnson told nurses he had **shortness of breath; worsening hoarseness; trouble swallowing; feeling of something struck in his throat.**
- Prison medical suspected chronic obstructive lung disease (COPD) and prescribed steroids, which did not help his breathing but did severely aggravate his diabetes. **Mr. Johnson was never seen by an MD for his breathing problems.**
- When the steroids didn't help, medical staff referred Mr. Johnson to an outside specialist for further diagnosis. That appointment was scheduled for a time subsequent to Mr. Johnson's death.
- On December 6, still in the infirmary, **Mr. Johnson showed many signs of acute respiratory distress:** nebulizer treatment was insufficient; he had rapid breathing and trouble sitting up; he was panting, restless, rubbing his chest, splashing water on his face, rocking back and forth; and **he said outright, repeatedly, that he could not breathe and needed to go to the hospital.**
- **Medical staff failed to recognize the urgency of the situation.** The on-call provider prescribed cold medicine. Nurses told him to stay in bed. No one checked Mr. Johnson's vital signs or listened to his lungs. No one informed the on-call provider that nebulizer treatment was not working as prescribed—a red flag. Prison nurses can and do send patients to the ER. However, the night Kenneth Johnson died, nurses either **failed recognize that he was dying or were unwilling to help.**

- Later that evening Mr. Johnson **collapsed in the bathroom and again said he couldn't breathe**. He asked for oxygen and hospitalization but was refused both.
- A correctional officer walked him from the bathroom back to bed. The officer observed that **Mr. Johnson was "flailing all over and would not sit still, stating he was getting dizzy ... . He kept panting and making a fuss saying he couldn't breathe."** The officer **threatened Mr. Johnson** that if he did not "knock it off," he would be placed holding—a form of solitary confinement. A nurse physically forced Mr. Johnson to lie back in bed.
- Subsequent security video shows Mr. Johnson in various stages of agony. **He died after hours of struggling to breathe** while nearby **nurses did nothing to help**.
- DOC's medical documentation **conflicts with the facts**. One log reported Mr. Johnson "awake" at 2:20 a.m. on December 7. By then, video shows, he had stopped breathing. This suggests that **nurses were not performing checks**. Nurses learned Mr. Johnson had stopped breathing **only when other patients alerted them**.
- By the time nurses checked Mr. Johnson, he had no pulse. Several more minutes passed before they started CPR, unsuccessfully. By the time EMTs arrived, Mr. Johnson had not breathed, nor did he have a pulse for twenty minutes. His remains were brought to North Country Hospital where he was **pronounced dead on arrival**.
- Autopsy showed that **Mr. Johnson died because a tumor in his throat had blocked his airway**—which an ear, nose, and throat doctor could have detected if the appointment had ever been scheduled. **Mr. Johnson could have been treated** by intubation, supplemental oxygen, and surgical removal of the tumor.
- Even afterward, **nurses blamed their victim**. One claimed she did not perform adequate checks "because he was so fidgety"—itself a sign of respiratory distress.
- **DOC is complicit in covering up its contractor's gross failure to provide live-saving medical care**. DOC has provided no internal administrative review, which both DOC policy and the medical contract require. DOC has claimed that Mr. Johnson died at the hospital, but he was dead on arrival.

## POLICY RECOMMENDATIONS

### **To the Legislature:**

- Mandate that DOC hire an in-house medical doctor to supervise medical care statewide, a function not performed since 2015.
- Mandate that DOC timely review of all aspects of the death of any inmate.

### **To the Department of Human Resources:**

- Investigate whether DOC staff's actions constituted employee misconduct.

### **To the Office of Professional Regulation:**

- Review the actions of and appropriately discipline all involved professional licensees.

### **To the Department of Corrections:**

- Reinstate the position of an in-house DOC physician as medical director to supervise the medical contractor.
- Reinstate an independent panel of experts to periodically review the provision of medical care by the DOC contractor and medical director
- Hold Centurion accountable for withholding timely life-saving care and conducting no subsequent administrative review.

- Review training protocols for correctional officers regarding implicit racial bias and recognition of medical emergencies.
- Revise staffing matrix to ensure facilities have regular accessible on-site medical doctors to provide timely review of complex cases occurs.

**To the Vermont Human Rights Commission:**

- Investigate the role that implicit racial bias in officers and nurses had ignoring a Mr. Johnson's pleas that he could not breathe.

**REPORT CONTRIBUTORS:**

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