

**NEW YORK CITY
BOARD OF CORRECTION**

January 13, 1999

MEMBERS PRESENT

John R. Horan, Acting Chair
Canute C. Bernard, M.D.
David Lenefsky
Barbara Margolis
Richard M. Nahman, O.S.A.
David A. Schulte

Excused absences were noted for Members Louis A. Cruz and Stanley Kreitman.

DEPARTMENT OF CORRECTION

Bernard B. Kerik, Commissioner
Gary Lanigan, First Deputy Commissioner
Tom Antenen, Deputy Commissioner
Roger Jefferies, Deputy Commissioner
Roger Parris, Assistant Commissioner
Robert Ortiz, Deputy Chief
Christy Sanchez, Assistant Chief
Joseph Guarino, Esq., Counsel's Office
Ron Greenberg, Inspection and Compliance Division
Captain J. Piccione

HEALTH AND HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Michael Tannenbaum, Assoc. Exec. Dir. for Administration

OTHERS IN ATTENDANCE

Maddy deLone, Prisoners' Rights Project, Legal Aid Society
Ashley Normand, Researcher
Lisa Rein, *Daily News*
Michael Shnab, City Comptroller
Dale Wilker, Esq., Prisoners' Rights Project, Legal Aid Society

Acting Chair John R. Horan called the meeting to order at 1:04 p.m. The draft minutes from the December 9, 1998 meeting were approved unanimously.

Acting Chair Horan noted that in 1998, stabbings and slashings had declined 50% from 1997 totals. He commended DOC Commissioner Bernard Kerik and his staff. Commissioner Kerik responded that on January 25th, the A & E Network will be presenting a one-hour special on violence in jail systems around the country. He said the program concludes by praising violence reductions on Rikers Island.

In response to a call for Members' reports, Board Member David Schulte reported that he visited the site of a suicide in a Contagious Disease Unit (CDU) in the West Facility. He noted that inmates who could infect others were isolated there, and that he had made the visit because of a recent suicide. Mr. Schulte stated that the hospital bed was not chained to the wall because the physicians said they must be able to move it when responding to emergencies. He said the inmate had placed the bed on its end, so that two metal "feet" were on the ground, and the others were in the air. Mr. Schulte said the decedent had hung himself at a time when ten inmates were housed in the unit. He reported that the decedent had banged on the window of his cell door, demanding his medication, and that this should have been a "warning signal" to the officer on duty to call medical staff to decide whether the inmate should receive medication. Mr. Schulte added that when the inmate flooded his cell, this should have been an "alarm button" that staff were confronting an emergency. Mr. Schulte said that both the DOC staff and the medical staff should have known that the inmate "meant business", and that the tour commander should have been notified.

Mr. Schulte then reported on an alleged murder in the Adolescent Reception and Detention Center (ARDC). He said the inmate died at the hands of another inmate in the protective custody area, where inmates are placed to protect them from individuals outside of the unit. Mr. Schulte noted that the cells were opened and the inmates were supposed to go to and remain in the day room, to watch a football game. The "B" officer is supposed to watch them in the day room, and Mr. Schulte added, both the "A" and "B" officers are supposed to watch the inmates when they are in their cells. Mr. Schulte said that the officers' station glass is so fogged and damaged that the view into the cell corridor is limited. He said that if the "B" officer had been in the corridor when the inmates were moving from their cells to the day room, the incident might have been prevented. Mr. Schulte noted that the inmate was put in a "choke hold" from behind, and left in an empty cell. He concluded by stating that the patrolling officer "had a lot of explaining to do".

Reiterating a point he had made at an earlier meeting, Mr. Schulte urged the Department to challenge a ruling that prohibits DOC from searching visitors at both the central visitor processing building and at each jail's visit area. He said that current practices could enable an armed visitor to board a shuttle bus, with tragic results. Commissioner Kerik strongly agreed with Mr. Schulte, and noted that DOC is aggressively litigating the matter. He said that several weapons had been confiscated in the facilities.

Commissioner Kerik said that the incident at ARDC is under investigation, and that when final conclusions are reached by the District Attorney and the Medical Examiner, he will have more to say. Regarding the suicide in the CDU, he said DOC's investigation includes looking into staff's responses to the "acting out" by the inmate. The Commissioner noted that because of the need to isolate the inmates in the CDUs, they are provided with televisions inside their rooms; an inmate could hang himself from the mounted metal television stand. He added that the Department may use a system of removable bolts to secure the beds. Executive Director Richard Wolf said that this would eliminate one way an inmate could commit suicide, but others will remain. He said that because the CDUs are so isolating and are occupied by small numbers of inmates who remain in their cells, the officers should be required to make more frequent, and irregular tours. Mr. Wolf noted that the Board had made this suggestion before - when an earlier suicide had occurred in another CDU, and also when there was a suicide in a small, special housing area of the North Infirmity Command. He said that officers in isolating, small housing areas should patrol more frequently than once every thirty minutes, as is required of officers in general population housing areas. Deputy Executive Director Cathy Potler said that a patrolling officer's view into the cell is restricted by glass panels on the exterior anteroom door and the door between the anteroom and the cell. Mr. Schulte asked how the officers should have responded to the inmate's behavior. Commissioner Kerik said every incident is different, but the investigation will determine whether the officer responded appropriately. Ms. Potler added that the decedent had an extensive psychiatric history, which included prior suicide attempts. She said that it was DOC staff who initially noted changes in the inmate's behavior and brought him to the attention of mental health staff. Mr. Schulte said that the mental health staff knew about the inmate's condition and did nothing about it.

In response to an invitation to comment on the suicide, Michael Tannenbaum, Correctional Health Services' Associate Executive Director for Administration, said that he could not comment. He said that all deaths and attempted suicides are reviewed internally within CHS, and CHS is obligated to report to the Quality Assurance Committee of the HHC Board. CHS's information, said Mr. Tannenbaum, is confidential quality assurance information. Board Member Dr. Canute Bernard asked whether the Board had input into the process. Mr. Tannenbaum said that the Board could raise issues that might be reviewed by the Quality Assurance Committee. Acting Chair Horan noted that the Prison Death Review Board (PDRB) was a separate process. Mr. Tannenbaum added that CHS reported inmate deaths to the HHC Quality Assurance Committee, which is an internal review.

Mr. Schulte asked about how mental health staff address the problems of inmates who have been placed in a CDU. He asked whether suicide watches occur in the CDUs. Mr. Tannenbaum said he did not know and would obtain an answer for Mr. Schulte.

Dr. Bernard asked whether the CDU suicide would be reviewed by the Prison Death Review Board. Mr. Wolf replied that this was possible. Acting Chair Horan noted that the Board did not yet have enough investigative facts to determine whether it would convene the PDRB.

Board Member Father Richard Nahman said that DOC's social services and counseling staff had been reduced, and that the chaplains are being asked to assume some of their responsibilities. Father Nahman said chaplains had told him that DOC management had said they legally could be required, and would be so required, to assume additional duties. He asked for DOC's policies and plans. First Deputy Commissioner Gary Lanigan said there had been some cuts, and that chaplains had been asked to assume some additional functions. He said that chaplains had been asked to take on additional duties because the duties had to be performed.

Mr. Horan then asked if chaplains were required to make in-person notifications to families of inmates who die. Mr. Wolf discussed a complaint staff had from family members of an inmate who had died in custody. He said that he had raised the issue with the Commissioner. The family members alleged to BOC staff that there had been no in-person notification, as required by DOC regulations. Mr. Wolf explained that a chaplain, accompanied by an armed correction officer, is supposed to go to the address of the next-of-kin listed on the inmate's papers, make the notification, and offer counseling. Mr. Wolf said that family members told BOC staff that they learned of the death only when a package they had sent to the inmate was returned, marked "deceased". He added that a DOC report noted that a telephone notification was made to decedent's mother, whom the writer understood to be deaf. Nonetheless, the writer noted that the mother understood what she had been told. Mr. Lanigan agreed with Mr. Wolf's presentation, except that the decedent had listed another relative to notify in case of emergency, a sister who the chaplain was unable to notify. Mr. Lanigan said that the chaplain learned about the mother and obtained her telephone number from another relative who also was in custody. Thus, Mr. Lanigan concluded that the chaplain went beyond what DOC regulations required by making two notifications. He added that the mother said she understood the chaplain, and thanked him at the conclusion of his call. Commissioner Kerik said that he would review the policy of returning packages marked "deceased". Mr. Wolf asked whether DOC continues to require that death notifications be made in person. The Commissioner said it was, and confirmed that the procedure is to be followed in the five boroughs and adjacent counties.

Mr. Wolf said that although the daily census has hovered at approximately 17,000 to 17,500 inmates, representing 98-99% of open and available capacity, DOC has told Judge Harold Baer that it intends to re-open the Brooklyn Correctional Facility ("Brig") later this month. Commissioner Kerik said DOC has revised its estimates, and now does not expect to re-open the Brig until mid-March or later.

Mr. Wolf noted the recent press reports about a six-month old City Comptroller's audit that found that DOC was having problems preparing its computers for the year 2000. Commissioner Kerik said that DOC is on target to complete all tasks by June 1999, leaving the balance of the year for testing updated systems. He said he was confident that DOC would not have problems readying its computers for the year 2000.

Mr. Wolf asked about the status of DOC's plans to ban smoking in the jails. Commissioner Kerik said that the Office of Labor Relations has not finished addressing union

issues.

Mr. Wolf asked for follow-up comments from DOC and Correctional Health regarding the suicide on November 14, 1998 at the Otis Bantum Correctional Center. He reminded the Members that CHS's Arthur Lynch had said at the December BOC meeting that a meeting was scheduled for December 18th. Mr. Tannenbaum said that any information developed is non-disclosable as part of the quality assurance process. He noted Dr. Lynch's absence, but said that even if he were present, Dr. Lynch could not discuss the death. Mr. Wolf asked about the implications of Mr. Tannenbaum's comments for CHS's continued participation in the Prison Death review Board. Mr. Tannenbaum said he did not know. Ms. Potler asked whether any corrective measures had been taken as a result of CHS's review of the suicide. Mr. Tannenbaum said he did not know, but that it would be a part of the internal review process. Mr. Wolf said BOC had been told that corrective measures could be disclosed. Mr. Tannenbaum said he will find out. Acting Chair Horan asked Mr. Tannenbaum to provide the information to Ms. Potler. Mr. Schulte asked when, if ever, information about suicides will be disclosed publicly so that common-sense solutions can be implemented to prevent them. Mr. Lenefsky suggested that the subject be tabled until the February meeting.

A motion to renew all existing variances was passed unanimously.

Acting Chair Horan turned to correctional health matters. He reminded those present that pending from the Board's December meeting were requests for documents enumerated by Mr. Lenefsky. Acting Chair Horan reported that thereafter, with the assistance of Commissioner Kerik, Mr. Horan and Mr. Lenefsky met with HHC President Dr. Luis Marcos, with whom they discussed how to improve communications. Acting Chair Horan said that thereafter Mr. Wolf and Ms. Potler met with senior HHC officials, that more document production is anticipated, and a process is underway that should result in improved communications. Mr. Tannenbaum said that some documents had been delivered recently, and that he had brought more with him for delivery today. He added that CHS had implemented a coordinated plan for responding to BOC requests that will go through Mr. Tannenbaum's office.

Mr. Lenefsky asked what documents Mr. Tannenbaum was producing today. Mr. Tannenbaum said he had brought information regarding 29 contract performance indicators that CHS had presented at the general session of the HHC Board of Directors. The information pertains to the second quarter of calendar year 1998. He added that there is a separate report, with more detail, that CHS provided in executive session to the HHC Board which was not being provided to BOC because it contains confidential quality assurance information. Mr. Lenefsky asked if Mr. Tannenbaum was producing documents for other quarters of 1998. Mr. Tannenbaum said that a review was conducted of the first quarter, but that it was in a different format, and that the third quarter review was underway but not completed. Mr. Lenefsky asked for production of CHS's first-quarter information regarding the contract performance indicators, in whatever format it exists. Mr. Tannenbaum said he would share the information.

Mr. Lenefsky expressed his thanks to Commissioner Kerik for arranging the meeting with Dr. Marcos, and to Dr. Marcos for meeting with Mr. Horan and Mr. Lenefsky. He described the documents produced thus far as a "good first start". He noted that the Board still has not received documents that will demonstrate that CHS is carrying out its monitoring responsibilities. Mr. Lenefsky again called for CHS's independent verification of St. Barnabas's monthly proposed staffing submissions, pursuant to section 3.7.1 of the contract. Mr. Tannenbaum said that he was providing today a copy of materials recently submitted to DOC, pursuant to CHS's obligations under the St. Barnabas Hospital (SBH) contract. He said the documents did not include CHS's independent verification.

Mr. Tannenbaum said that CHS monitors SBH expenditures by performing desk audits. CHS also reviews HIV drugs dispensed, compared with expenditures for those drugs. Mr. Tannenbaum said CHS compares SBH staffing to the staffing model, adjusted for census, in St. Barnabas's proposal. Mr. Wolf noted that CHS had provided SBH's proposed monthly staffing schedules, which lists physicians, physicians' assistants, nurses, and mental health staff, by name. He said CHS also had provided information regarding "full-time equivalents", which compares St. Barnabas totals to those of Montefiore and St. Vincent's totals. Mr. Lenefsky said that St. Barnabas has reduced physicians by between 25% and 33%, and has correspondingly increased the number of physicians' assistants. Thus, Mr. Lenefsky stated, a "full-time equivalents" analysis is not a meaningful analysis. Mr. Tannenbaum responded that CHS believes that a meaningful analysis is one that compares actual staffing to the contract model. He noted that St. Barnabas has increased staff as necessary. He said that under the contract, CHS is purchasing a service rather than a specific number of St. Barnabas staff. Mr. Lenefsky said that he did not have confidence that CHS was monitoring to determine whether the services are being provided. He said he would like to be proven wrong, but that he is asserting the proposition that CHS is not performing meaningful monitoring. (At this point, Commissioner Kerik, noting another commitment, left the meeting.) Mr. Lenefsky said the basis for his assertion is CHS's failure to provide verification documents, both of St. Barnabas staffing and of performance indicator outcomes. Mr. Lenefsky said that another reason was the significant number of vacant positions in the CHS organization chart. He noted that, as of December 9, 1998 vacancies existed for an analyst assigned to the Executive Director, and for a Bureau of Evaluation Services analyst. Mr. Tannenbaum noted that the organization chart, prepared in December, reflected CHS's plan for the future rather than what currently exists. He said this was done to enhance CHS's monitoring capabilities. Most of the vacancies, he added, are new positions. Mr. Tannenbaum said interviews had been conducted for the position of Director of Field Monitoring, and a co-director has been hired. Mr. Tannenbaum said that there is an aggressive recruiting campaign to fill the vacant positions. An offer has been made to a candidate for Medical Director, and CHS is seeking a Director of HIV Services and a Mental Health Director. Mr. Lenefsky said that the large number of vacancies supports his proposition that CHS is not doing meaningful monitoring. Mr. Tannenbaum reported that CHS had contracted with IPRO to conduct independent chart reviews. Mr. Lenefsky said this was a positive development. He added that until now, chart reviews were being conducted by nurses who are not qualified to review physicians' medical decisions. Acting Chair Horan said the Board will await the production of

additional materials, and discuss the status of document production at its February meeting.

Mr. Schulte said that he had visited the dialysis area at the Manhattan Detention Complex (MDC) to assess for himself CHS's claims in its Interim Report that the services had been improved. Mr. Schulte said that he found that the CHS Report was wrong, and that the public had received incorrect information. He noted that at the December meeting, Dr. Lynch had promised to find out who had written the dialysis portion of the Interim Report. Mr. Lenefsky added that inaccurate information also was presented in a November 13, 1998 letter to Acting Chair Horan. Mr. Schulte said that the evening tour nurse who was added to the staff does not assist with dialysis, is not trained to do so, and the service is not performed when this nurse is present at MDC. Mr. Tannenbaum said that another nurse was added to the night shift, thereby enabling the dialysis nurse to focus exclusively on dialysis responsibilities. Mr. Lenefsky said that the dialysis service being performed today is the exact same service as was performed prior to St. Barnabas's arrival on January 1, 1998. He said this situation is an example of CHS offering statements that were, at best disingenuous and misleading, and at worst, dishonest. He reiterated that it is an important function of government to provide truthful, useful, and reliable information. Dr. Bernard said that information needs to be provided that conclusively establishes that dialysis services are in fact being performed appropriately. Mr. Tannenbaum said that he did not believe anyone was alleging that dialysis services were deficient. Mr. Lenefsky urged that both CHS and the Board adopt as a standard that all reports and statements should contain truthful, useful and reliable information.

Mr. Schulte asked how many CHS employees are in the jails monitoring the delivery of medical services. Mr. Wolf said that CHS had not yet provided that information, and that the senior HHC officials with whom he and Ms. Potler had met agreed to provide the information.

Mr. Lenefsky asked Mr. Tannenbaum to extend again to Mr. Erazo an invitation to attend monthly BOC meetings. He added that Dr. Lynch and Linda Calzaretta should attend as well.

Mr. Tannenbaum said that in a week CHS will be moving from its temporary quarters on the ferry to a Sprung building in the West Facility. He said that most of the CHS central office staff will have offices in the Sprung.

The meeting was adjourned at 2:20 p.m..