

**NEW YORK CITY
BOARD OF CORRECTION**

January 13, 2005

MEMBERS PRESENT

Stanley Kreitman, Chair
John R. Horan, Vice Chair
John H. Banks III
Jane Paley Price
Michael Regan
Hildy J. Simmons

An excused absence was noted for Richard Nahman, O.S.A.

DEPARTMENT OF CORRECTION

John Antonelli, Senior Deputy Commissioner
Tom Antenen, Deputy Commissioner for Public Information
Florence Hutner, Deputy Commissioner for Legal Matters
Roger Parris, Deputy Commissioner, Health and Mental Health Services
Judith LaPook, Chief of Staff
Elizabeth Myers, Director, ISCD
Darlene Merritt, Deputy Warden, Inspectional Services & Compliance Division

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

James Capozziello, Deputy Commissioner, Division of Health Care Access & Improvement
George Axelrod, Director of Risk Management, Correctional Health Services (CHS)
Robert Berding, Director, Clinical Services, CHS
Bruce David, M.D., Director of Mental Health, CHS
Donald Kern, M.D., Medical Director, CHS

OTHERS IN ATTENDANCE

Becky Pinney, Group Vice President, Prison Health Services
Carl Thelemaque, Legislative Financial Analyst, City Counsel
Paul von Zielbauer, *New York Times*
Dale Wilker, Legal Aid Society's Prisoners' Rights Project (PRP)

Chair Stanley Kreitman called the meeting to order at 1:05 p.m.

A motion to approve minutes from the December 9, 2004, with explanation from Board Member Richard Nahman, O.S.A., regarding his statement during the November meeting, was approved unanimously.

Chair Kreitman raised the issue of the inmate suicide that occurred on January 4, 2005 at the George Motchan Detention Center (GMDC). He said BOC staff responded immediately and noted that, once again, the inmate hanged himself from a cell air vent. The Chair said he wrote a letter to the Commissioner, with copies to all the Board members, and read the first two paragraphs, as follows:

On behalf of the Board of Correction, I am respectfully requesting that you investigate whether there are any products that might be available to replace the existing air vents in all single cells in the City's jails and report your findings and recommendations to the Board.

The inmate suicide last week at the George Motchan Detention Center is but the latest reminder that the large openings in the vent covers provide an easy and accessible opportunity for inmates who decide to attempt to commit suicide.

Chair Kreitman read the final paragraph, as follows:

We are informed that DOC staff members recently inspected a newly-developed vent cover that has been designed to be suicide resistant. Please explore this and other products that are available and let us know what is currently available, and the cost. Thank you for your prompt attention to this most serious matter.

Chair Kreitman asked DOC Deputy Commissioner John Antonelli to comment on the most recent suicide, noting that several in the last year involved inmates hanging from air vents. Mr. Antonelli said DOC always seeks new designs, but said he was not familiar with the new vent to which the Chair referred. Chair Kreitman urged DOC to seek out any products that would eliminate this opportunity for inmates to attempt suicide. Mr. Antonelli said DOC would do so. Deputy Commissioner Roger Parris said that DOC has installed hundreds of new vents and has looked at prototypes of suicide-resistant vents. He said that retrofitting information will be provided to the Board. Mr. Antonelli said DOC's plan was to change vents in mental observation areas, and this has been done. Board Member John Banks asked if DOC could provide pictures of the different vents. Chief of Staff Judith LaPook added that vents were retrofitted in new admissions areas as well. Board Member Hildy Simmons asked if there had been suicides in areas where the vents have been retrofitted, noting that the lack of suicides in those areas would suggest that the retrofitted vents are in fact an improvement. Mr. Parris noted that an inmate committed suicide by putting a ligature in the door as it closed.

Chair Kreitman said that the committee examining the Minimum Standards met and will recommend that some minor adjustments be made. He said the committee will meet again in a week or two and come up with recommendations to bring to the Board. He added that there also will be a meeting with the Department to learn what changes it would suggest, and that the

committee will develop a final list of recommendations to present to the full Board, after which the complicated process of amending the Standards could begin.

Chair Kreitman said that there was a court decision yesterday regarding variances granted to permit DOC to impose “pre-hearing detention”. DOC Deputy Commissioner for Legal Matters Florence Hutner, noting that the decision is 47 pages, reported as follows:

One inmate, Adrian Santiago, challenged his 23-hour lock-in status, which had been imposed pursuant to a variance from the Board. The Judge found the lock-in status, and the variance itself, invalid. The problem was the variance’s unlimited nature. DOC therefore intends to resubmit the variances for the other inmates in lock-down status. To meet the requirements of the Order, the new requests will be for a time certain, probably 28 days, which is the period between an inmate’s due process hearing and the review required by Directive 6005. DOC will then renew the request every 28 days.

Santiago was one of seven inmates indicted for the homicide of inmate Tyree Abney in GMDC on October 3, 2004. He is one of the relatively few inmates for whom DOC has sought lock-down status for security reasons – for his safety and the safety of others.

Chair Kreitman added that the Board acted on the request of the Bronx DA, which did not want DOC to conduct a hearing that might compromise the criminal case. Ms. Simmons asked for the current status of the inmate. Ms. Hutner said the inmate was moved yesterday to a different facility, and he no longer is in lock-down status. She said the inmate is being centrally monitored, but this imposes no restrictions on him. Ms. Simmons asked if DOC can impose restrictions on the inmate going forward. Ms. Hutner said she is continuing to review the decision, but at this point believes that additional restrictions cannot be imposed unless the inmate misbehaves. She added that the Judge said the inmate must be placed in general population, but Ms. Hutner said that as a legal matter, the Judge cannot dictate where an inmate is housed. Ms. Hutner said DOC is considering whether to ask the Judge to reconsider that portion of the decision. Board Member Michael Regan asked whether there had been court decisions in the past questioning the Board’s ability to grant variances. BOC Deputy Executive Director Cathy Potler said no, adding that this decision doesn’t question the Board’s ability to grant variances but rather the terms of the variance itself. Ms. Potler said that the Board’s decision was to allow the inmates to be in lock-down status until charges were served and a hearing held. Ms. Hutner said that the Judge decided the variance was invalid because of the amount of time that had elapsed and the fact that the variance had no clear end date, even if the Board had not intended to grant an open-ended variance. Mr. Banks asked Ms. Potler to provide each Member with a copy of the decision. Chair Kreitman said this topic will be discussed further at the next BOC meeting.

Board Member Jane Paley Price asked DOC for violence statistics for the last month. Mr. Antonelli said he would provide statistics to the Board. Ms. Paley Price then asked if beds were added to the facilities for which variances were granted last month and, if so, how the affected areas were operating. Mr. Antonelli said the beds were added, and that things are going very well. Ms. Potler said DOC sent reports regarding these areas just yesterday, and some staff analysis will be required. She said she would provide the reports and some analysis within a

week. Ms. Simmons said the information provided by DOC was difficult to interpret because, for example, many of the problems relate to plumbing, and work orders have been submitted. She said that the information lacks context, in that it does not present the average length of time elapsing before repairs occur. Ms. Simmons suggested that a few sentences in a cover letter might help provide context and make the information more useful. Mr. Antonelli said that plumbing issues that could result in “down” cells are repaired very quickly. Ms. Paley Price said that the statistics report almost no violence in the affected housing areas, except for 10 incidents in the “Other” category. She asked what “Other” means. Mr. Antonelli said “Other” referred to discoveries of contraband.

Ms. Potler reported that DOC moved a number of adolescents from the punitive segregation unit at ARDC to CPSU. She said this was the first time adolescents were housed in CPSU, albeit in a separate housing area. Ms. Potler said DOC asked for permission to house the CPSU adolescents in jumpsuits, as already had been the case at ARDC. She said that under the authority conferred upon him by the Board, BOC Executive Director Richard Wolf, after conferring with two Board Members, granted a variance to DOC to place the CPSU inmates in jumpsuits. Ms. Simmons, who noted that she and Chair Kreitman were the Members with whom Mr. Wolf had conferred, moved that the Board endorse the variance. The motion was approved without opposition.

Chair Kreitman turned to correctional health issues. DOHMH Deputy Commissioner James Capozziello said he had met with BOC staff to discuss how the new Prison Health Services contract differed from the recently expired contract. He said the term of the contract is three years, with a three-year renewal option. Ms. Simmons asked if this was similar to the previous contract. Mr. Capozziello said that under the old contract, there was a one-year renewal option. He added that it is common with City contracts for renewal option lengths to equal the length of the contract. Mr. Capozziello said the contract amount for the first year is a maximum of \$100.3 million, although the budgeted amount for expenditure is \$98.8 million. He said the total maximum reimbursable amount for the contract is \$350 million, for the three-year period beginning on January 1, 2005. Mr. Capozziello said the budgeted total includes provision for correctional health services in facilities that currently are closed, but might reopen during the contract period. He reported that another important change in the contract is the approach to Performance Indicators: there now are two groups of indicators. Mr. Capozziello said DOHMH and PHS will be tracking 67 different areas, 40 of which will be Performance Indicators, which if not met could result in liquidated damages. He said that most of the 27 remaining areas cover areas where “something new is starting” (such as new chronic care programs, including diabetes) or DOHMH does not feel it has a performance expectation with which it is comfortable. Mr. Capozziello said that on 60 days notice, the City can move indicators from one group to the other. He said this will enable the City to move to constantly try to improve performance under the contract. Ms. Simmons asked if this means there can only be 40 Performance Indicators at any time. Mr. Capozziello said yes. Mr. Banks asked if the scale for liquidated damages had changed. Mr. Capozziello said the initial amount remains \$5000 per Indicator. He said a difference is that whenever PHS fails to substantially meet an Indicator during two successive quarters, the liquidated damages can double. He noted that under the old contract, doubling would not occur if PHS failed twice in a row, so long as it had improved its performance somewhat. Ms. Simmons asked what would happen if PHS were to be out of compliance for a third consecutive time. Mr. Capozziello said a corrective action plan might be required. He added that under the old contract, the maximum liquidated damages per Indicator was \$10,000; under

the new contract, the maximum is \$20,000. He said the overall liquidated damages cap is \$400,000 or 40% of overhead, whichever is lower. Mr. Capozziello said that, under the new contract, a Performance Indicator level of 95% or above will be considered “substantially met”, except for up to ten “critical” Indicators for which DOHMH may set higher thresholds. Mr. Regan asked for the total amount of liquidated damages collected under the last contract. Mr. Capozziello said he would have to check, and would provide the information to the Board. He estimated that as the contract matured the average liquidated damages per quarter was approximately \$25,000. Ms. Potler asked how DOHMH will select “critical” Indicators. Mr. Capozziello said DOHMH will decide based upon what it concludes is most important to patient care. He said he will provide to the Board a list of the initial Performance Indicators, the other indicators, and those that are “critical”.

Dr. Bruce David, DOHMH’s Director of Mental Health Services, reported as follows on several “highlights” of the new contract:

A new position of Supervising Psychiatrist has been created in the new contract. The position will provide clinical oversight regarding prescribing of medications and suicide prevention monitoring. Clinical Supervisors also have been added to the Mental Health components of the contract. Schedules have been modified to provide more on-site supervision. The matrix has been changed to provide that designated people, not just positions, are assigned to particular locations at specific times. This should reduce movement and improve continuity of care.

Dr. Donald Kern, Director of Medical Services, reported as follows:

Peer review and in-service training improvements should improve the quality of clinical care. Under the new contract, PHS will move towards more of a chronic care model. Dedicated teams of clinicians will focus primarily on chronic diseases, such as hypertension, diabetes, HIV, asthma and pulmonary diseases. Inmate-patients need to be educated about taking long-term medications and adjusting life styles. The same practitioner will see the chronic care patients to improve continuity of care.

Chair Kreitman asked about rapid HIV testing. Dr. Kern said he sent information to the Board. He noted that the test provides a result in 20 minutes, rather than the two weeks required by the old serology test. He said the rapid tests were initiated in March, and since then a total of 10,000 inmates have been tested of whom 177 tested positive. Dr. Kern said the rapid test is a screening test, and the serology test is considered the “gold standard”. He said that a positive rapid test is followed by a confirming serology test, whereas a negative rapid test is considered a “true negative”. He added that rapid testing improves opportunities for educating inmate-patients, and counseling is provided to those who receive a positive result for a rapid test, even as results from a confirming serology test are awaited. Mr. Capozziello said that DOHMH has increased the number of staff in MEDSPAN, a program for inmates who are HIV positive and undergoing treatment. He said that beginning next week, screening will begin for all males under 35 years old for Chlamydia and gonorrhea. Ms. Potler said that the Board had been told a year ago that the rapid test kits were being provided free of charge to the City by the Centers for Disease Control. She asked if this still was the case. Mr. Capozziello said that the City now is buying the kits.

Mr. Regan asked about flu vaccines. Mr. Capozziello said DOHMH has been able to obtain as much vaccine as needed. He noted that availability has been expanded to include clinical staff, but not correction officers. He said that any officer who wants to get vaccinated and meets the criteria should have ready access in the community.

A motion to renew existing variances was approved without opposition. Chair Kreitman adjourned the meeting at 1:55 p.m.