

**NEW YORK CITY  
BOARD OF CORRECTION**

**November 10, 2005**

MEMBERS PRESENT

Hildy J. Simmons, Chair  
Stanley Kreitman  
Richard Nahman, O.S.A.  
Michael J. Regan  
Alexander Rovt  
Milton L. Williams, Jr., Esq.  
Gwen Zornberg, M.D.

An excused absence was noted for Member Paul A. Vallone, Esq.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner  
Tom Antenen, Deputy Commissioner for Public Information  
Roger Parris, Deputy Commissioner for Programs  
Florence Hutner, General Counsel  
Mark Cranston, Deputy Warden in Command, Office of Policy and Compliance (OPC)  
Elizabeth Myers, Director, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Arthur Gualtieri, M.D., Deputy Commissioner  
Bruce David, M.D., Assistant Commissioner, Correctional Health Services (CHS)  
Jason Hershberger, MD, Director of Psychiatry, CHS  
George Axelrod, Director of Risk Management, CHS  
Robert Berding, Director, Clinical Services, CHS  
Laura Szapiro, Senior Advisor to Deputy Commissioner, CHS

OTHERS IN ATTENDANCE

Don Doherty, Division Vice President, Prison Health Services (PHS)  
Kareem Fahim, *New York Times*  
Jeff Krupski, Mayor's Office of Operations  
Tatiana Ortiz, Budget Analyst, OMB  
Trevor Parks, M.D., Medical Director, PHS  
Colleen Roche, Consultant, PHS  
Michael Schnall, Director of Legislative Affairs, City Council  
Carl Thelemaque, Legislative Financial Analyst, City Council  
Russell Unger, Legislative Counsel, City Council  
Dale Wilker, Esq., Legal Aid Society

Chair Hildy J. Simmons called the meeting to order at 9:37 a.m. She welcomed the newest Board member, Milton Williams, Jr., an attorney who has substantial prosecutorial and community service experience. Chair Simmons appointed Mr. Williams to the Board's Minimum Standards Review Committee. Chair Simmons stated that Mr. Williams replaces John Horan, who served on the Board for more than 20 years with great distinction.

A motion to approve the minutes from the October meeting was approved without opposition.

Chair Simmons said that by the December meeting, a timeline memorandum would be circulated to the Members outlining the procedural steps required for amending the minimum standards. Chair Simmons noted that the Board's Rules of Procedures, which date back to the 1970s, should be reviewed and updated. She said that at the December Board meeting, she would offer some suggestions for revisions.

Member Gwen Zornberg, M.D., presented the Health Committee report as follows:

The Committee met and discussed the psychotropic medication variance request, and recommends that the Board approve the request. The Committee is still considering the TB variance request, which has been reworked by the Department of Health and Mental Hygiene. The Committee will meet before the next Board meeting to discuss the request and the Performance Indicators.

Chair Simmons invited Dr. Bruce David, DOHMH Assistant Commissioner, to comment on the Department's the variance request. Dr. David reported the following:

The goal of the variance request is to improve psychiatric services. It will not result in the loss of psychiatric staff. Rather, the variance would enable the Department to use the psychiatric staff more appropriately. The existing standards require that psychiatrists see and evaluate more stable patients in general population every 14 days to re-order medications. This is no longer consistent with community standards and does not make medical sense. If the variance is granted, patients in need of a higher level of care in the mental health housing areas will be seen more frequently.

Member Richard Nahman noted for the record that the Legal Aid Society, in its letter to the Board made substantial observations about the variance request. He asked how the Board should respond to the issues raised in the letter. Chair Simmons responded by noting that the questions raised in the Legal Aid letter were many of the same questions that were discussed with Department staff at the Health Committee's meeting. Father Nahman agreed, but felt that the issues should be publicly discussed by the Board. Member Stanley Kreitman expressed concern about whether the legal procedures referred to in the Legal Aid letter were followed. He added that he just wanted to make sure that we "dotted all the I's and crossed all the T's". Dr. David stated

that the counsel for DOHMH reviewed the letter and had no problems with it procedurally. Father Nahman stated that, to be certain that he has all the information he needs to vote, he would like to hear from the Legal Aid representative.

Chair Simmons called on Dale Wilker, an attorney with the Prisoners' Rights Project of the Legal Aid Society. Mr. Wilker stated that the subject of the variance is not appropriate because the Mental Health Minimum Standards require a showing of "impossibility" to meet the standard and a plan to come into compliance by a date certain. Mr. Wilker added that the variance request should be presented as an amendment to the standards because it substantially changes the standards. An amendment requires an entirely different procedure. Mr. Wilker proposed that the Board treat this variance request as an amendment and follow the required procedures, or else entertain the variance request but require DOHMH to show why it is impossible to meet the standard and when it will come into compliance. Mr. Wilker surmised that impossibility to meet the standard is really a psychiatrist staffing issue and that DOHMH should be required to achieve compliance by increasing its staff by a specific date.

Chair Simmons thanked Mr. Wilker for his comments and concern. She added that next year when the Board amends the minimum standards, it will take into account his comments. A vote was taken and the Board Members voted to approve the variance. Dr. Zornberg reported that the Health Committee interviewed mental health clinicians on Rikers Island who expressed their support for this variance because it would give them more time with their patients. She emphasized the Health Committee's resounding approval of this variance because it would improve patient care.

Dr. Gualtieri introduced the new Director of Psychiatry, Dr. Jason Hertzberger. Dr. Hertzberger served as Acting Clinical Director at Kirby Forensic Psychiatric Center, and was Medical Director of In-Patient Psychiatry at Long Island College Hospital before joining DOHMH.

Mr. Kreitman, Chair of the Standards Review Committee, reported that the Committee met twice this fall, once in September when it formulated and sent questions to the Department of Correction (DOC) regarding its proposed changes to the standards, and again in October when a second set of questions were developed and sent to the Department. Mr. Kreitman said that the committee received answers to the first questions, but not to the second set. He stated that the committee members will meet with DOC staff in December. Chair Simmons added that she assumes DOC will have a response to the second letter before the December meeting. She thanked both committees for their hard work.

Chair Simmons asked Commissioner Horn to present his report. Commissioner Horn discussed the Board's standards review process. He said that "management by variance" is not the way to proceed, and he encouraged the Board to look to the Standards of the State Commission on Correction. He said that the burden should be on those who impose a higher standard on the City to explain why it is necessary. He suggested that the Board should look to other standards for guidance. The Commissioner

stated that he did not have anything new to report since the last meeting, but added that the safety indicators for this calendar year appear to be “favorable”.

Mr. Kreitman asked the Commissioner to update the Board Members on the condition of the officer who was injured at AMKC and the incident where the inmate was run over by a forklift and died. Commissioner Horn reported that the officer underwent surgery and remains on sick leave, and the alleged perpetrator has been charged by the Bronx County District Attorney’s Office. The forklift accident is still under investigation.

Chair Simmons requested that the Commissioner or Dr. David update the Board Members on the “No Harm Unit”. Commissioner Horn presented the following report:

There is no policy directive for No Harm housing. It is for inmates who have committed serious infractions, some of which date back to 2002. Many of the inmates committed assaults with weapons. Others owe bing time, including one inmate who owes almost 1,000 days. These inmates have been housed in the mental health unit at AMKC and have not served bing time because they have engaged in self-injurious behavior, have “feigned suicidal ideations”, or were “of concern” to the mental health staff. These inmates remained in the mental health area where they exposed mentally ill inmates and staff to danger, and avoided “accountability for their behavior”. After rather substantial evaluation by several mental health clinicians, some mentally ill inmates who owed bing time were transferred to MHAUII bing. Other inmates in the mental health unit were found not to be mentally ill and not to be suicidal, but rather were engaging in “purposeful behaviors” that might unintentionally result in self-harm. For their own protection, these inmates were placed in punitive segregation subject to a full due process hearing. The Department takes precautions by denying the inmates with any items with which they can cause harm. Allegations made by these inmates of rules being violated are investigated by the Department, and thus far none have been found to be true.

Chair Simmons asked Dr. David if he had anything that he wanted to add. Dr. David reported the following:

The unit was set up for those inmates who are not mentally ill, but who have engaged in dangerous, self-injurious behavior in order to avoid punitive segregation. In the past when inmates threatened self-harm, they were automatically sent to mental health and became the responsibility of the mental health staff. These inmates avoided punitive segregation, and were placed in mental health housing areas where they took advantage of vulnerable inmates. These inmates turned the safe, therapeutic environment of a mental health housing area into a dangerous place for both inmates and staff. They were able to avoid punitive segregation by engaging self-harm behavior. Now that this new unit has been established, DOHMH is able to focus resources to work with those patients with mental health illnesses.

Commissioner Horn added that when the inmate's punitive segregation time is completed, he will be sent to general population.

A motion to renew existing variances was approved without opposition.

Mr. Kreitman requested that the Board do something to recognize John Horan's more than 20-years of service. All agreed, and staff will proceed with the arrangements.

Chair Simmons recognized Mr. Wilker. He discussed concerns about the 'No Harm Unit' describing the conditions of confinement as "cruel and inhuman and degrading". Mr. Wilker referred to inmates in suicide smocks having to wear "diapers" and not given shoes. Chair Simmons pointed out that Mr. Wilker has corresponded with the Department about the unit and that it is premature to raise these issues with the Board before Mr. Wilker receives a response from the Department. Chair Simmons added that if Mr. Wilker is not satisfied with the response, then he should present his concerns to the Board. Mr. Wilker said that since these conditions are occurring now, the Board should hear his concerns. Chair Simmons stated that Board staff inspected the unit and will continue to do so and have held meetings about the unit. Mr. Wilker alleged that the Board has for decades routinely renewed existing variances which under the Board's standards is illegal. Chair Simmons explained that next year the Board will be revising the standards to address that concern.

The public meeting was adjourned at 10:16 a.m.