

**NEW YORK CITY
BOARD OF CORRECTION**

May 8, 2008

MEMBERS PRESENT

Hildy J. Simmons, Chair
Michael J. Regan, Vice Chair
Stanley Kreitman
Rosemarie Maldonado, Esq.
Paul A. Vallone, Esq.
Milton L. Williams, Jr., Esq.

An excused absence was noted for Member Alexander Rovt.

DEPARTMENT OF CORRECTION

Martin F. Horn, Commissioner
Carolyn Thomas, Chief of Department
Florence Hutner, Esq., General Counsel & Deputy Commissioner for Legal Matters
Stephen Morello, Deputy Commissioner, Public Information
Mark Cranston, Deputy Chief of Staff/Commanding Officer, OPC
Ronald Greenberg, Director of Inspections, Office of Policy & Compliance (OPC)

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Louise Cohen, Deputy Commissioner
Jason Hershberger, M.D., Assistant Commissioner, Correctional Health Services (CHS)
George Axelrod, Esq., Director of Risk Management, CHS
Charles Luther, M.D., Executive Director for Mental Health, CHS

OTHERS IN ATTENDANCE

Harold Appel, M.D., Contract Administrator, Doctors' Council, SEIU
Donald Doherty, Division Vice President, Prison Health Services (PHS)
Amanda Lockshin, Esq. Legal Aid Society, Civil Appeals & Law Reform Division
Trevor Parks, M.D., Medical Director, PHS
Tim Rudd, Analyst, Office of Management and Budget
Eisha Williams, Legislative Financial Analyst, NYCC
Milton Zelermyer, Esq., Legal Aid Society, Prisoners' Rights Project

Chair Hildy Simmons called the meeting to order at 9:32 a.m. A motion to approve minutes of the March 13, 2008 Board of Correction meeting was approved without opposition, after Chair Simmons requested that on page two, the term “his” electronic record system be changed to “the” electronic record system.

Chair Simmons announced the resignation from the Board of Father Richard Nahman. She noted that, among current Board Members, he had served the longest term, and did so with distinction. She said that she will send him a letter honoring his contributions to the Board. Other Board Members supported this gesture, saying that he served with insight and compassion. Chair Simmons indicated that there will be a vacancy on the Board until the Presiding Justices nominate someone to replace Father Nahman.

Chair Simmons also announced that Dr. Gwen Zornberg resigned from the Board on February 25, 2008. She noted that Dr. Zornberg devoted much time and expertise to working with Department of Health and Mental Hygiene (DOHMH) officials to evaluate and improve services and related procedures. Chair Simmons announced appointment by the Mayor of a new Board Member, Pamela Brier, President and CEO of Maimonides Medical Center in Brooklyn to replace Dr. Zornberg. Chair Simmons said Ms. Brier is a member of the NYC Board of Health, and previously ran Bellevue Hospital.

Chair Simmons thanked Board Members Stanley Kreitman and Milton Williams, BOC Executive Director Richard Wolf and Deputy Executive Director Cathy Potler, and DOC Deputy Chief of Staff Mark Cranston, who reviewed DOC's proposed procedures for implementing the amendments on telephones and correspondence. Chair Simmons reported that Mr. Kreitman and Mr. Williams met with other Board Members to review the procedures and ensure that they were consistent with the amendments. Chair Simmons added that BOC staff would work with DOC staff to develop a process to monitor implementation, and to evaluate and report on progress. She announced that she instructed BOC staff to submit the amended Standards to the City Record for publication, which usually occurs one week after submission. She reminded Board Members that the amendments will take effect thirty days after publication.

Chair Simmons discussed the status of the petition for rulemaking received from the Legal Aid Society's Prisoners' Rights Project on February 29, 2008. She explained that after the Board voted to initiate rulemaking at its March meeting, Mr. Wolf prepared a draft that is patterned after the rulemaking procedures of several other NYC agencies. She noted that many agencies have no such procedures. Mr. Wolf said that the draft procedures will be subject to the requirements of the City Administrative Procedure Act (CAPA), including publication in the City Record, a public hearing, and a final publication thereafter. A motion to approve the draft for publication was approved without opposition. (Copy attached).

Noting that final approval of the amendments to the Standards took much longer than anyone had anticipated, Chair Simmons said that Board and DOHMH staff had not had an opportunity to collectively identify key issues for inclusion in a new monthly DOHMH report to the Board. Deputy Commissioner Louise Cohen said that there are

three important issues that greatly affect the inmate population: HIV, diabetes, and chemical dependency. She suggested that DOHMH report to the Board monthly on these three issues with the following specificity: the extent of impact on the inmate population, treatments and inmate education utilized, actions taken by DOHMH that proved useful or not along with studies performed, and topics in which improvement still must be made.

Chair Simmons asked how many inmates have diabetes. Ms. Cohen responded that the number may be slightly less than in NYC's general population, and that inmate-patients are a bit younger. She stressed the difficulty of treating even well-controlled diabetes in a correctional setting, noting that most inmates received little treatment before arrest and must be educated on all aspects of treatment such as testing blood and diet. Ms. Cohen explained that, given the intractability of substance abuse, providers employ a harm reduction approach, educating inmates about safer use as well as about abstinence. She noted the difficulties of finding appropriate community-based treatment in a timely fashion, and getting ex-offenders to begin treatment and to remain in it. Regarding HIV, Ms. Cohen said that in 2006 DOHMH conducted a blind sero-survey to estimate the prevalence of HIV among City inmates. She noted that in 1998, survey results were approximately 51% higher than in 2006: 7.6% vs. 4.7% for men and 18.1% vs. 9.7% for women. She said this reduction roughly mirrors the prevalence reduction in NYC's general population, but pointed out that CDC figures for general population are lower nationwide than in NYC. She stressed that inmates' HIV prevalence rates present significant problems because they are well above figures for NYC's general population. She distributed a chart entitled "HIV Prevalence" (attached): the chart compares 2006 Department of Justice national *prison* figures with the NYC jail figures, and national general population estimates from the Centers for Disease Control with 2005 NYC figures. Ms. Cohen announced that DOHMH received a \$4 million federal grant ("Opening Doors") to conduct a four-year study of HIV discharge planning.

Correctional Health Services (CHS) Assistant Commissioner Dr. Jason Hershberger reported the suicide of inmate Steven Morales on April 27th in the Robert N. Davoren Center (RNDC) as the first suicide in calendar year 2008. He stated that CHS' investigation is pending, and staff will meet within two weeks to review and compile data. He added that, at the end of this week, CHS will meet with Prison Health Services (PHS) officials about the care provided to the inmate. Dr. Hershberger said that CHS staff will prepare a report to Health Commissioner Dr. Thomas Frieden, who then submits his own report to the DOHMH Quality Improvement Executive Committee (QIEC). Chair Simmons asked if the decedent had been under mental health care. Dr. Hershberger responded that he could not discuss that subject. Chair Simmons asked why he could not discuss the matter further. Dr. Hershberger responded that confidentiality laws prevent public disclosure of treatment records. Ms. Cohen added that DOHMH does not want to have a conversation about the suicide in advance of fully investigating the incident, adding that information about medical care is different from information about mental health care. Mr. Kreitman commented that Members already had received a memo from BOC staff containing a lot of detail about the suicide, so a lot of information already has been revealed. Chair Simmons said confidentiality already had been compromised with the public disclosure of the decedent's name. She added that the Board is not seeking details, and asked if Ms. Cohen meant that she cannot even confirm whether or not the inmate was known to mental health providers. Ms. Cohen said he was

under general care. Vice Chair Michael Regan stated that he respects the legal position described by Dr. Hershberger and Ms. Cohen, but that they should understand that the Board has a mandated responsibility involving anything that happens in the jails. Member Paul Vallone said that the Board also must be concerned about corrective action taken to address problems revealed by the investigation. Commissioner Horn commented that, when such an incident occurs, BOC obtains some details quickly from the DOC 24-Hour Reports. Dr. Hershberger stated that DOHMH gives BOC a copy of the inmate's medical chart. Ms. Potler confirmed that she had received the chart.

Dr. Hershberger requested renewal of two variances. He noted that the first variance, from section 5.2 (b)(i) of the Mental Health Minimum Standards, permits providers to prescribe psychotropic medications for 28 days rather than 14 days for stable inmates residing in general population housing areas. He reported that there had been no negative consequences of the variance during the preceding six months. Dr. Hershberger described the second variance, from Health Care Minimum Standards section 301 (c)(8), as authorizing DOHMH to maintain an inmate's electronic mental health record separate and apart from the paper medical record. Mr. Wolf said that the variance is required as DOHMH moves to an integrated electronic medical records system, because the existing provision defines a "health record" as a single jail-based medical record that contains all available information pertaining to an inmate's medical, mental health and dental care. Dr. Hershberger added that there had been no negative consequences reported regarding this variance during the preceding six months.

Ms. Cohen apologized to the Board for not submitting written requests for variance renewal. Chair Simmons responded that the Board would vote on each request, and that written requests must be submitted by May 12th. Ms. Cohen agreed. Chair Simmons then called for votes, and motions to renew each variance were approved without opposition.

Ms. Cohen said that DOC Commissioner Horn might be able to provide more detailed information about the suicide than had DOHMH. Commissioner Horn stated that, at 4:35 pm on April 27, a captain conducting a regular tour of a housing area saw a towel covering a cell window, and ordered the inmate to remove it. Commissioner Horn added that, after shouting the order several times with no response and no activity by the inmate, the captain ordered staff to open the cell door, where he found the inmate hanging from a ligature with his body against the cell door. Commissioner Horn said that an officer administered CPR, and medical staff responded within five minutes, pronouncing the inmate dead at 5:22 pm. Noting that the Medical Examiner did not yet rule on the cause of death, Commissioner Horn said he is sure that the ruling will be hanging. He reported that cameras in the housing area will provide a visual record of staff patrols. He added that the inmate was not under an order for enhanced suicide observation or prescribed medication. Commissioner Horn said the decedent was born in October 1989. He added that the inmate was remanded on October 9, 2007 for the alleged second degree murder of his baby daughter, a crime that received significant media coverage. Commissioner Horn said that he made a phone call to the baby's mother at approximately 2:00 p.m. but DOC has no information about the conversation. He said DOC's Investigations Division is reviewing all videos and logs, and taking statements from numerous inmates and staff for the purpose of determining if DOC staff performed

their duties appropriately. The Commissioner said there are “grey areas” regarding the suicide that need to be examined. He said that the State Commission of Correction’s Medical Review Board will investigate, and has requested copies of all records. Commissioner Horn noted that this is the first suicide of Calendar Year 2008 and the second of fiscal year 2008. He said that DOC has, by far, the lowest suicide rate nationwide among large jail systems. He reported that, in the six years prior to 2003, there were 25 suicides but that, in the five and one-half years since 2003, there were 19. Commissioner Horn said that he views each suicide as a defeat. Mr. Vallone asked if the inmate was involved in any unusual incidents or had received infractions, to which Commissioner Horn replied no. Mr. Regan expressed surprise that the inmate was not on suicide watch, saying that, given the crime alleged and his age, it is beyond question that such close attention was needed. Mr. Vallone agreed. Dr. Hershberger assured the Board that providers evaluate each inmate’s needs.

Commissioner Horn reported that the Executive Budget is “good news” for DOC for FY 09. He said funds allocated by a variety of sources would enable DOC to provide additional services designed to reduce recidivism. He said DOC was allocated sixty-three (63) additional uniformed positions, with baseline funding for 21 officers in the Mental Health Assessment Unit for Infracted Inmates (MHAUII). He said fifteen additional officer posts will result in an additional fifty MHAUII beds. The Commissioner said that the budget included baseline funding to continue 21 drug interdiction officers. He reported that funds have been added to DOC’s budget to continue five school officers, and to the Department of Education budget as well. Commissioner Horn said that funds were added to DOC’s budget to continue a \$5 per week school incentive to encourage 19 to 24 year-old inmates, who are not mandated to attend school, to do so. He said that the number of such inmates attending school last year rose by 23% and, with continuation of the stipend-incentive and additional classrooms, the number is expected to increase further. Commissioner Horn said that a deteriorated modular section of RNDC’s adolescent school will be replaced.

Commissioner Horn said the Executive Budget calls for funding in FY 09 and FY 10 for an alternative-to-detention pilot program for non-violent offenders with substance abuse or mental health issues. He noted that this initiative, and other investments in reentry programs, are expected to lower the average daily census by 300 for FY 10, resulting in redeployment or headcount reduction of 54 officers, for a combined savings of \$5 million. He warned, however, that police initiatives are expected to increase DOC’s prisoner census during the remainder of FY 08 and in FY 09. Commissioner Horn stated that three and one-half million dollars had been allocated to a contract with John Jay College, in conjunction with the NYC Justice Corps, to place inmates in appropriate jobs upon discharge from DOC custody.

Chair Simmons asked about the fiscal impact on the criminal justice programs that appear to have been providing reentry successfully for a number of years. Commissioner Horn explained that the new initiatives were not intended to replace these services, which he said target the early discharge of inmates to specific community-based programs, whereas new funding aims to reduce the number of sentences to incarceration. He said DOC’s budget includes a \$1.688 million decrease in discharge planning funding,

which had been provided by the Council in FY 08, but was not in the new budget. He added that the Council has not yet restored these funds.

Mr. Kreitman asked if DOC has sufficient uniformed staff available now. Commissioner Horn responded that 70 rookies will graduate from the Academy on June 10th. He added that DOC schedules small rookie classes on a rolling basis, noting that the new budget assumes DOC will meet hiring goals, and thereby minimize overtime costs, which DOC must aggressively control. Mr. Regan asked if DOC is experiencing the same challenges with recruitment as is the Police Department. Commissioner Horn commented that DOC and the Correction Officers Benevolent Association (COBA) negotiated a better deal for new officers than did the police union, so DOC is achieving 80% of its recruitment target. He noted that a new police officer earns \$25,000 whereas a new correction officer earns \$35,000, adding that a correction officer can earn \$68,000 after 5 1/2 years and, with overtime and longevity, can earn \$90,000 by the twentieth year, when the contract still allows officers to retire. Commissioner Horn said annual sick leave days for uniformed staff had been as high as 18 days but dropped significantly as jail safety has improved. He reported that 1800 officers, or 20%, took the recent Captain's Examination, indicating that many view corrections as a career.

Commissioner Horn asserted that DOC may become victim of its own success with violence reduction because the flip side of staff satisfaction is staff complacency, which can prove dangerous in a correctional setting. Mr. Kreitman asked if inmates are less violent or if supervision has improved. Commissioner Horn responded that both are true, explaining that staff is better trained and managed, but there are other changes that contribute to reduced violence. He said that police have the luxury of focusing on low-level crimes, and non-violent arrests often yield non-violent inmates. He added that, with fewer serious felony cases, the length of detainee stay is shorter. He reminded Board members that, when violent incidents were at their highest, there were as many as 23,000 inmates whereas, in recent years, there have been as few as 13,500.

Commissioner Horn stressed that mental illness – which affects 25% of all inmates – is the common thread in jail violence. Mr. Vallone asked about the biggest challenge in working with such inmates. Commissioner Horn responded that such inmates are unstable and therefore unpredictable, often alternating between agitation and withdrawal. He explained mentally-ill inmates need protection from other inmates, but until an inmate's mental health illness is identified, officers are not alerted to expect trouble. Ms. Cohen agreed that no other chronic condition comes close to the prevalence of mental illness among NYC's inmate population, or is more difficult to address. Mr. Vallone asked if the new budget continues funding for the intensive mental health discharge planning described at past Board meetings. Commissioner Horn reiterated that funds have been increased for the mental health punitive segregation area, MHAUII.

Commissioner Horn said that he wanted to echo Chair Simmons' expressions of gratitude to Board Members Kreitman and Williams, and to all other Board members, for thoroughly reviewing DOC's proposed procedures on telephones and correspondence. He added that he trusts DOC has accommodated members' concerns about implementation of the amendments. The Commissioner noted that DOC did not yet present to the Board draft procedures regarding uniforms, explaining that preparing for

implementation of this change is far more complicated than preparing to implement the amendments regarding telephone calls and correspondence. He said DOC is proceeding slowly and carefully. He reported that DOC will phase in procedures that will include advance notice to inmates that civilian clothing will be confiscated and then prohibited. He stated that DOC will notify inmates through the Inmate Council, the Inmate Rule Book, and posted notices, and will notify their families in the visit houses as well as on the DOC web site. He added that DOC will issue press releases and, as to implementing the amendment for telephone monitoring, DOC will try to put a story in the New York Law Journal.

Commissioner Horn said that DOC first must obtain uniforms, and will phase-in procedures one jail at a time. He said he expects that the biggest problem will be the daily court appearance process: that is, the dilemma of an inmate being taken to court wearing a uniform, then being released from court with his/her personal property remaining at the jail. He noted that DOC already deals with this issue for sentenced inmates and punitive segregation inmates, who already wear uniforms to court, but added that these inmates are a small percentage of the total inmate population. He reassured the Members that the Department is addressing all of these issues, and working through them so as to assure smooth implementation. Chair Simmons said that she trusts that Commissioner Horn will keep the Board advised of progress on preparing for, and phasing in, the clothing amendment, and that he will advise the Board of anything the Members can do to be helpful. Commissioner Horn responded that he would do so, and that DOC is very anxious to proceed with implementation. He said that, as the first step Department-wide, the easiest and, from a security perspective, the most effective way to begin, will be to confiscate all civilian shoes, and to prohibit shoes from being sent to inmates. He explained that DOC is beginning to see fights over shoes and attempts to smuggle contraband inside shoes. Chair Simmons said that the Board will expect further updates by DOC regarding implementation of a mandatory uniform policy.

DOC Deputy Chief Mark Cranston requested renewal by the Board of all existing variances from the Minimum Standards for Correctional Facilities. Mr. Regan made a motion to renew the variances, which the Members approved unanimously.

Chair Simmons told everyone to look for the amended Standards to be published in the City Record, hopefully next week. She then adjourned the meeting at 10:45 a.m.