

**NEW YORK CITY
BOARD OF CORRECTION**

June 9, 2005

MEMBERS PRESENT

Hildy J. Simmons, Chair
Stanley Kreitman
Richard Nahman, O.S.A.
Jane Paley Price
Alexander Rovt
Paul A. Vallone
Gwen Zornberg, M.D.

Excused absences were noted for Vice Chair John R. Horan and Member Michael Regan.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Tom Antenen, Deputy Commissioner for Public Information
Mark Cranston, Deputy Warden in Command, Office of Policy and Compliance (OPC)
Elizabeth Myers, Director, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Nancy Arias, Director, Service Delivery Assessment Unit, Correctional Health Services (CHS)
George Axelrod, Director of Risk Management, Correctional Health Services (CHS)
Robert Berding, Director, Clinical Services, CHS
Louise Cohen, Associate Commissioner for TakeCare New York
Elena Panova, Deputy Director for Mental Health

OTHERS IN ATTENDANCE

Don Doherty, Division Vice President, Prison Health Services (PHS)
Frederico Gebauer, General Counsel, Office of the Criminal Justice Coordinator
Martine Kalaw, Budget Analyst, Office of Management and Budget
Jeff Krupski, Mayor's Office of Operations
Trevor Parks, M.D., Medical Director, PHS
Becky Pinney, Group Vice President, PHS
Colleen Roche, Consultant, PHS
Dale Wilker, Legal Aid Society, Prisoners' Rights Project
Paul von Zielbauer, *New York Times*

Chair Hildy J. Simmons called the meeting to order at 1 p.m. A motion to approve minutes from the May 12, 2005 meeting was approved without opposition.

Chair Simmons said it was time to reconstitute two important committees. She said the Health Committee will be chaired by BOC Member Gwen Zornberg, M.D., and the other members will be Richard Nahman, Alexander Rovt, and Paul Vallone. Chair Simmons said the Minimum Standards Committee will be chaired by Member Stanley Kreitman, and the other members will be Vice Chair John Horan, Jane Paley Price, and Michael Regan. Chair Simmons said she will serve on both committees *ex officio*.

Chair Simmons reported on the Minimum Standards review process. She said that at the last BOC meeting, Mr. Kreitman reported on the initial work done by the review committee. She reported that staff from BOC and the Department of Correction met to discuss possible revisions, and she distributed to the Members a set of proposed revisions prepared by DOC. Chair Simmons asked all Members to review DOC's proposals, and said that the Standards review committee should consider the proposals and come back to the full Board with recommendations as to how BOC might move forward. She expressed the hope that work could begin soon, and asked that Members contact Mr. Kreitman by email or telephone with comments. Chair Simmons said that the goal would be to have gone through the review process by the end of calendar year 2005. DOC Commissioner Martin Horn suggested that the Board might wish to seek direction from the Law Department regarding procedures under the City's Administrative Procedure Act (CAPA). In response to a question from Mr. Kreitman, BOC Executive Director Richard Wolf said that CAPA is a chapter of the City *Charter*. He said it sets forth the steps that a regulatory body must follow when it seeks to promulgate regulations, including public notice and written notice of opportunity to comment on proposed rules, a public hearing, and publication of rules that the body approves. He said the sooner the Board's internal review process can be completed, the sooner CAPA procedures may begin. Chair Simmons asked Mr. Wolf to outline the procedural steps required under CAPA. Member Paul Vallone asked if the proposed revisions just distributed were a joint product of BOC and DOC. Chair Simmons said the proposals were prepared by DOC. She noted that Commissioner Horn told her that a representative of Great Britain's Inspectorate of Prisons who recently visited the City's jails used the term "expectations" rather than Minimum Standards. Chair Simmons said the distributed documents are DOC's "expectations". Mr. Vallone said that the previous BOC Chair, Mr. Kreitman, had asked Mr. Vallone to be a member of the Standards Committee because of his legal background. He asked that he be added to the Committee. Chair Simmons noted that she tried to balance the two committees. She said that there are legal issues that the Health Committee will have to address, and asked that she and Mr. Vallone continue the discussion after the meeting. She added that all Members will be involved in the Standards review process. Member Richard Nahman asked for an explanation of the edits on the document. Deputy Warden in Command Mark Cranston explained that DOC staff set up the Standards as an editable document, and that DOC highlighted in red and crossed out language that DOC believes should be deleted. He added that some "new" pages have been substituted for existing pages when the changes were extensive. He said DOC referenced SCOC standards. Chair Simmons asked DOC to provide the SCOC Standards to each BOC Member. She added that BOC staff will work with the Standards Committee. Member Jane Paley Price asked if by "referenced" Mr. Cranston meant the proposed change was identical to the SCOC standard. Mr. Cranston said that in some places DOC is proposing to substitute the entire SCOC standard for the current BOC standard.

He said that with a new page 7 DOC is proposing replacing the Board's language with the SCOC standard. He said this is the case with the Visits language as well. Commissioner Horn said sometimes the DOC revision substitutes a number used by SCOC -- for example, the number of toilets per inmate -- for the number in the BOC Standards. Mr. Wolf said BOC staff already have reviewed DOC's proposals and can assist the BOC Members in identifying all such changes.

Chair Simmons asked Commissioner Horn to present a report. He thanked the Board for undertaking the Standards review process and said he expects the results will be better for the City when the Board has Standards "that are not internally inconsistent." He said that since the last Board meeting there were no similar incidents to those discussed at that time, and that "things seem to have quieted down." He said there have been no recent stabbings or slashings or serious uses of force. The Commissioner said DOC recently appeared at City Council budget hearings. He said the Executive Budget provides DOC with \$800 million for fiscal year 2006, \$29 million less than FY05. He said much of the reduction is in overtime spending, which will be reduced from a current authorization of \$62 million to \$43 million. He said one way of achieving the reduction will be to shift responsibility in court houses from correction officers to the court officers. He said DOC is working with the Correction Officers Benevolent Association (COBA) to decrease use of sick time and thereby reduce overtime expenditures. He said the Executive Budget: restores some corridor security posts at the George Motchan Detention Center (GMDC) and the George R. Vierno Detention Center (GRVC); adds some posts for drug interdiction; and allows for an increase in the number of inmates who will undergo random drug testing. He said that the number of inmates who test positive had decreased from 7% to 3%. Commissioner Horn said he expects the Council will approve the budget and may provide additional funds for discharge planning. He said DOC has had discussions with the Department of Health and Mental Hygiene (DOHMH) about increasing beds for the Mental Health Assessment Unit for Infracted Inmates (MHAUII). He noted that the current unit has 32 beds that are not air-conditioned, and that with 2000 inmates in the jails who have been identified as seriously and persistently mentally ill, a larger unit is required. He said DOC is converting a 50-bed unit in GRVC, including removing window cranks and installing molded plastic beds. Commissioner Horn said DOC will be air-conditioning the 300-bed tower in which the new MHAUII will be housed. He said that DOHMH is planning an "intensive management unit" for inmates who are not necessarily psychotic but "who appear to be manipulating and feigning self-harm". He said the unit would enable DOC to hold these inmates accountable in a safe environment.

Commissioner Horn next discussed two variance requests. He said one is a modification of a request made several months ago. The current request would allow DOC to increase by five the number of inmates housed in each dorm at the Vernon C. Bain Center (VCBC). He said the City entered into a stipulation providing for confinement in air-conditioned housing units of inmates whose physical or medical condition makes them susceptible to harm when the temperature rises above a certain level. He said the list of such inmates includes those on lithium or with cardiac problems or Type I diabetes, and noted that approximately 1000 inmates had been identified who require "heat-sensitive housing". Commissioner Horn said DOC pre-placed these inmates in air-conditioned locations, but there is a limit to the number of locations. He said that inmates are different: an inmate on lithium might not want to house with an inmate who is over age 65. He said that other than the modulars and the Sprungs, the only available air-conditioned housing is at BBKC and VCBC.

He said that having another 70 beds available will give DOC the option of separating inmates who may need to be separated, and that the number of inmates who may be heat sensitive fluctuates. He said we do not know what the summer weather will be. The Commissioner said that if a housing area loses water or power, or if sewage lines collapse, DOC could lose its “core capacity” to house inmates with heat-sensitive conditions. He noted that if five beds were added each dormitory would still meet State standards. He added that DOC had considered moving the day room wall to create additional space in the sleeping area, but the boat’s steel construction caused DOC to seek another solution. DOC seeks the variance through October and then would review the situation. Member Alexander Rovt asked who orders medical equipment for the jails. Commissioner Horn said DOC does not order medical equipment. DOHMH Director of Clinical Services Robert Berding said that medical equipment and supplies are ordered by the Health Department. Mr. Rovt said he asked because he thought he might be able to help reduce the cost of expenditures. Member Stanley Kreitman asked whether DOC believes the additional beds would affect security, noting that the sight lines were discussed when DOC presented its earlier request. Commissioner Horn said no, noting that three or four double-decker beds would be placed against the back wall and not affect sight lines. He added that there had been no problems at the other facilities where the Board had granted variances to increase the number of beds in dormitories. Father Nahman asked if people with chronic illnesses and people on psychotropic medications would be integrated into general population on the Barge. The Commissioner said they are integrated now. Member Jane Paley Price said that it is her understanding that inmates currently assigned to the Barge are generally nonviolent and some are sentenced. Commissioner Horn said there is a work group of City-sentenced inmates, adding that VCBC is the main intake facility for Bronx and Queens counties. Ms. Paley Price said new admissions are not integrated with the others. Commissioner Horn said they might be, and he said that some of the new admission inmates might require heat-sensitive housing. He added that DOC attempts to pre-position at VCBC inmates who are on trial in Bronx County. He noted that DOC transportation buses are not air-conditioned, and the trip from VCBC to Bronx court is a lot less onerous than from Rikers Island. The Commissioner said DOC would move on-trial inmates, new admission inmates, and sentenced inmates as well. Ms. Paley Price asked if when heat-sensitive inmates are moved to VCBC, will it “taint” what is now a “docile” population? The Commissioner said security classification will dictate which inmates are assigned to which dormitories. He said that high-custody inmates would not be moved into medium-custody housing areas. Ms. Paley Price asked if DOC has sufficient space on Rikers Island. Commissioner Horn said that the only high-security air-conditioned housing areas are at BBKC and the 100 cells at VCBC. He added that there are no air-conditioned cells on Rikers Island at all. Prisoners’ Rights Project Attorney Dale Wilker said that there are air-conditioned cells in the West Facility. Commissioner Horn said West Facility cells are Contagious Disease Unit beds. Ms. Paley Price asked if there were risks that the Board needed to be aware of before agreeing to granting a variance. Chair Simmons said it was her understanding that this variance request is a pared-down version of an earlier variance request that was put aside. She said that the point here is that only if the current state of affairs changes -- currently all heat-sensitive inmates are being accommodated in air-conditioned housing -- would the additional beds be used. Chair Simmons said the variance would provide “contingency space” because at the current moment DOC has sufficient space. Commissioner Horn agreed, noting however that extra beds in air-conditioned housing areas might be needed if there were to be “ten days of 95 degree heat and people started falling over”. Chair Simmons said that it is not as if DOC would be implementing the variance “tomorrow” unless circumstances changed. Ms. Paley Price said

that the current request is significantly different than the earlier request. Chair Simmons replied that the current request is “pared down” from what the original request was. She said that DOC seeks the variance now, rather than waiting until later, because the Board will be conducting an inspection on Rikers Island in July and does not meet in August, so the Board will not be meeting again until September. She said the goal is to give DOC the authorization it seeks should the need arise over the summer. Ms. Paley Price said she understands. Commissioner Horn said that, in answer to Ms. Paley Price’s earlier question, there are always risks and DOC believes it only takes prudent ones. He noted that VCBC has adopted an institutional order clarifying who can be housed where. He said DOC will provide the same kinds of reports as have been provided for other housing areas where variances have been granted. He said if DOC should determine that something is amiss, it can revert to the current dorm capacity. Mr. Wolf said that the way the Board was contemplating setting up the variance, DOC would have the contingency available, and if the Commissioner and his staff concluded that it was necessary to press these beds into service, the beds would be available and DOC would notify the Board as to the reason(s) for doing so and use the beds. Ms. Paley Price asked if the bunk-beds would be there as needed. Mr. Wolf said the bunk-beds would be in the VCBC dormitories if needed. Mr. Wilker said that the Legal Aid Society did not receive notice of the pared-down variance request. He asked for a brief opportunity to review it before the Board finally approves it. He said the request contains benefits for Legal Aid’s clients and he would like to review it for possible negative consequences. He suggested that the Board might issue a time-limited short-term variance, given the current heat wave, during which time interested parties could review and comment. Chair Simmons said she appreciated the comments and concerns, but that this is essentially part of the original variance upon which Legal Aid commented. She said her concern, inasmuch as the Board will not be meeting again over the summer, is to avoid putting the Department or any inmates in a position of jeopardy by not allowing a vote to go forward. She added that if Legal Aid wishes to comment further, it may of course do so. Mr. Wilker said he respectfully disagreed. Chair Simmons said that if the variance is granted, it would only be in effect until October 1st. Ms. Paley Price moved the question, which was seconded. The motion passed without opposition.

Commissioner Horn said that the second variance was included in the Department’s request to renew existing variances. He said DOC sought a six-month renewal of expiring variances to add two beds to dorms at EMTC, three beds to dorms at OBCC, and seventeen at one BBKC dorm. He said that the additional beds did not result in increased violence and that maintenance issues were responded to promptly. Mr. Wolf said that these variances were placed on the agenda separately because they were of six-month duration. He added that BOC staff recommends extending the variances for an additional six months. A motion to extend the variances was passed without opposition.

Mr. Vallone said the Commissioner’s report contained much good news. He asked which facilities would receive additional security posts under the new budget. Commissioner Horn said GMDC and GRVC, noting that the posts currently are being funded through overtime. Mr. Vallone raised the question of the possibility of additional funds from the Council for discharge planning. Commissioner Horn said this was being discussed by some Council Members. Mr. Vallone asked if there was something the Board could do to assist with discharge planning efforts. Commissioner Horn said the City’s efforts could be discussed at a future meeting, noting that discharge plans had been provided for more than 6000 inmates and that the number of inmates being released at Queens Plaza has been reduced by two-thirds. He

said that inmates who leave jail with a case management plan and remain in case management for 90 days or more return to jail at a somewhat lower rate than inmates who do not. He said that last year the Council gave \$10 million to United Way of New York, which just issued a request for proposals for New York City Works, a series of workforce development projects geared to specific populations, with a high priority to programs that will serve inmates coming out of jails and prisons. Commissioner Horn said that many agencies that work with DOC are competing for the money with DOC's support. Chair Simmons said that a briefing would be a good idea for the fall.

Chair Simmons asked for a report from the Health Department. Mr. Berding presented an overview of PHS contract Performance Indicators (PIs) for the first quarter of 2005. He said that a network of quality control committees examine operations and outcomes and report up through the Bureau of Correctional Health Services to the executive committee, which is chaired by the Health Commissioner, Dr. Thomas Frieden. He added that a service delivery assessment unit looks at records and clinic administration employees observe operations. Mr. Berding said that all are involved in accurately assessing performance so that DOHMH and PHS can develop corrective action plans. He said the PIs are part of the contract, and are "met", "substantially met" or "not met". Chair Simmons said more items are identified as "substantially met" or "not met" than "met", and she asked what concerns this raises for DOHMH inasmuch as it seems the needle is moving in the wrong direction rather than the right one. She asked what happens to the liquidated damages money. Mr. Berding said that DOHMH considers all PIs that are "met" or "substantially met" to be "in the plus column". Chair Simmons said that the fact that a PI is acceptable for purposes of the contract does not make it acceptable for our aspirational goals. Mr. Vallone asked what is meant by "substantially met". Mr. Berding said this is determined by the committee's review of all of the data. CHS' Director of Risk Management George Axelrod said that the level required for each PI to be "substantially met" is indicated on the chart, which in most cases is 95%. Mr. Wolf asked if liquidated damages are applied against DOHMH's contract payments to PHS. Mr. Axelrod said yes. Chair Simmons noted that DOHMH therefore pays less, but for less service, and asked how this is beneficial. Mr. Berding said the purpose of assessing liquidated damages is to identify areas for improvement. He said that DOHMH always looks for ways to improve performance, including for PIs that are "substantially met". He added that there is a corrective action plan for each PI that is not met. Mr. Berding said that last month he reported that dental services were not going to meet the standard, so the corrective action was to restore the dental positions that had been reduced. He said this is a collective bargaining issue and the 4.2 dentist positions are in the process of being "offered back". Ms. Paley Price asked what is being done in the interim. Mr. Berding said that in the interim, "we're providing services as best we can", noting that the issue is timeliness of service. He said if a provider accepts an offer to return to work, it will take a couple of weeks for the paperwork to be completed. Chair Simmons asked that Mr. Berding inform BOC staff as to the timing of the return of the dentists. Deputy Executive Director Cathy Potler asked Mr. Berding to address some of the continuing "not met" PIs, such as on-Island specialty clinics which quarter after quarter is "not met". She asked what the previous action plans were and what is being done to address the problems. Mr. Axelrod said that the corrective action plan was to revise the appointments scheduling process. Ms. Potler again asked why this PI does not get met. Mr. Axelrod said he did not know if there was any one problem that had been identified, noting that hundreds of appointments are scheduled each quarter and the system needs to "function smoothly". He said that a new data base now allows the system to track inmates centrally as they move from one

facility to another. Member Gwen Zornberg, M.D. said that check-box-driven medicine is inadequate and that a system must devise ways to make sure that care is optimized. She noted that the PI “Intake history and physical” continues to be “not met”, and said that this makes it very difficult to provide any kind of treatment to a patient. She said that this is compounded by the fact that medical records seem to frequently get lost, and asked how this has been addressed. Mr. Axelrod said the issue is not the quality of the examination but that the current form requires a provider to fill out 150 fields, and if even one is not filled out, the form fails. He described the form as “onerous” and said CHS is working on revising the form to make it more “user friendly”. Chair Simmons suggested that a separate conversation take place with officials from CHS and the Board’s health committee regarding PIs that continually are “not met” and what is being done to correct the problems. Mr. Berding said that corrective actions for the first quarter are now being implemented mid-way through the second quarter. He said that results should be seen in the third quarter.

Chair Simmons raised the issue of the Board’s July visit to Rikers Island, noting that Cathy Potler had spoken to DOC about arrangements. She noted that the visit will take place on the morning of July 14th, and said that BOC staff will prepare a briefing for the Members in advance of the visit.

A motion to renew existing variances passed without opposition.

A motion to go into executive session to discuss personnel matters was approved without opposition. The public meeting adjourned at 2 p.m. and the Board went into executive session shortly thereafter.

The executive session concluded at 2:15 p.m.