

**NEW YORK CITY  
BOARD OF CORRECTION**

**September 9, 2004**

MEMBERS PRESENT

Stanley Kreitman, Chair  
John R. Horan, Vice Chair  
Richard Nahman, O.S.A.  
Jane Paley Price  
Hildy J. Simmons

Excused absences were noted for Members John H. Banks III, Michael Regan and Raul Russi.

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DEPARTMENT OF CORRECTION

Martin Horn, Commissioner  
Tom Antenen, Deputy Commissioner for Public Information  
Florence Hutner, Deputy Commissioner for Legal Matters  
Roger Parris, Deputy Commissioner for Programs  
Judith LaPook, Chief of Staff  
Thomas Tsotsoros, Deputy Warden, Inspectional Services & Compliance Division (ISCD)  
Elizabeth Myers, Director, ISCD

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

James Capozziello, Deputy Commissioner, Bureau of Correctional Health Services (BCHS)  
Donald Kern, M.D., Medical Director  
George Axelrod, Director of Risk Management, BCHS  
Robert Berding, Director, Clinical Services

OTHERS IN ATTENDANCE

Donald Doherty, Vice President, Prison Health Services (PHS)  
Nahreen Khandker, Policy Analyst, Fire & Criminal Justice Services Committee, City Council  
Jeff Krupski, Mayor's Office of Operations  
Trevor Parks, M.D., Medical Director, PHS  
Becky Pinney, Project Director, PHS  
Russell Unger, Legislative Counsel, City Council  
Paul von Zielbauer, *New York Times*  
Dale Wilker, Legal Aid Society, Prisoners' Rights Project

Chair Stanley Kreitman called the meeting to order at 1:05 p.m. A motion to approve minutes of the July meeting was approved without opposition.

Chair Kreitman reported that he had received letters from City Council Members Margarita Lopez and Alan Gerson requesting that the Board conduct an investigation into conditions at Pier 57 where the Police Department had detained arrestees who were protesting against the Republican National Convention. He said that the Board did not have jurisdiction and that the Council Members were so notified. Chair Kreitman asked DOC Commissioner Martin Horn to discuss the Department's role in the post-arrest procedures. Commissioner Horn said that DOC staff provided transportation for arrestees who had to be brought to court. He said that he agreed that the Board did not have jurisdiction to investigate, as operations were similar to arrest processing in a precinct. He said that he inspected the holding areas each evening, and reported that he observed police officers being courteous and professional, noting that they were careful to neatly voucher and stack the bicycles of protesters. Commissioner Horn added that the police seemed mindful that they were not dealing with serious criminals, but rather with people who were exercising their First Amendment rights to protest.

Chair Kreitman said that there had been two inmate suicides since the July Board meeting, and asked for reports. Commissioner Horn reported that at 9:45 a.m. on July 18, 2004 general population inmate David Pennington was found hanging from a sheet in his cell in the Anna M. Kross Center (AMKC). He was taken to Elmhurst Hospital, where he died on July 22<sup>nd</sup>, after his family decided to remove him from life support. The Commissioner noted that the decedent had been charged with three counts of burglary and was being held on \$25,000 bail. He added that the decedent had been seen by a psychiatrist on several occasions. The Commissioner said that the response time seemed appropriate and he found no fault with staff. Commissioner Horn said that the second suicide occurred on July 19<sup>th</sup>. He reported that at approximately 10:50 a.m., inmate Milton Diaz was found hanging from a towel tied to a shoelace that had been secured to a ceiling vent in the bathroom of a general population dormitory in the Vernon C. Bain Center (VCBC). The Commissioner said that Diaz had been held since June 26, 2004, with a bail of \$3,500, for allegedly violating an Order of Protection. He said that shortly before Diaz was observed hanging, at 10:50 a.m., he had been on the telephone with his wife, the subject of the Order of Protection. He noted that Diaz had been seen several times by mental health staff. BOC Executive Director Richard Wolf, noting that all of the elevators at VCBC were inoperable at the time of the suicide, asked whether this was a contributing factor. Commissioner Horn said that he was on the roof of VCBC when the first report of an inmate hanging was transmitted, and he responded to the area. He said that officers helped to carry medical response equipment up the stairs from the clinic to the housing area. Commissioner Horn said that he observed uniformed staff perform CPR, and also was present as responding medical staff attempted unsuccessfully to revive the inmate. The Commissioner said that Diaz actually was first observed hanging at 11:03 a.m., and medical staff responded at 11:15 a.m. He reiterated comments at previous BOC meetings that DOC's "worst enemy is the physical plant".

Board Member Jane Paley Price raised again her longstanding concern about the air vents, and asked what could be done. Commissioner Horn noted that the vent used by Diaz was

a cover protecting a sprinkler. He said that if the holes in the air vents were made smaller, air flow would be significantly impeded.

Board Member Richard Nahman asked whether defibrillator machines could be stored in the housing areas. Commissioner Horn asked wondered who would operate them, noting that the "A" officer was responsible for monitoring traffic into and out of the 100-bed housing area, and the "B" officer was required to patrol the two dormitories in the area. He noted that he observed the officer assisting the medical responders by pushing back the inmates who were crowding around Diaz as resuscitation efforts proceeded.

DOHMH Deputy Commissioner James Capozziello said that following the two suicides, DOHMH and DOC collaborated to improve emergency notification communications. He said that in the future responding medical providers will be told of physical conditions that might affect the response. He said that had the providers known the elevators were inoperable, they would have gone immediately to the stairs. BOC Deputy Executive Cathy Potler asked whether changes were being made to communications regarding an inmate's medical condition, such as whether he was conscious and whether he was breathing. Commissioner Horn said he did not want to rely upon the "lay medical opinion" of an officer, and wanted communications to focus solely on generating the most prompt medical response.

Chair Kreitman said that throughout the summer, he noted a large number of pager messages reporting temperatures throughout the jails. He asked for a report on DOC's efforts to comply with Federal District Court Judge Harold Baer's orders. DOC General Counsel Florence Hutner reported that Judge Baer issued two Orders, on July 26<sup>th</sup> and on August 4<sup>th</sup>. She said that the Orders require the City to identify inmates who were subject to "heat-related" illnesses, using criteria supplied by the Court's medical consultant, and to move them to air-conditioned housing within two hours if the housing area temperature reached 85 degrees Fahrenheit. Ms. Hutner reported that this is an extraordinarily difficult time-frame to meet, noting that DOC requires itself to complete inter-facility transfers within twelve hours. She noted that a previous Order, which mandated time-frames for transfers and for the housing of newly-admitted inmates, no longer was in effect. Ms. Hutner said that DOC issued a teletype requiring that inmates who are identified at intake as meeting the "heat-sensitive" criteria must be housed in air-conditioned housing immediately. She said this self-imposed requirement enables DOC to comply more readily with Judge Baer's time frames. Commissioner Horn added that DOC has few cells that have "security ventilation" – 100 at VCBC and approximately 900 at the Bernard B. Kerik Complex (BBKC). He said that because of classification requirements – adult and adolescent, male and female, detention and sentenced - it is difficult to find security ventilation cell housing for all heat sensitive inmates who must be housed in cells. He added that most of the climate controlled housing areas are dormitories, and many are in modular and Sprung buildings that DOC is required to replace. The Commissioner said this has implications for DOC's capital construction plan. He added that the Department's needs are being reassessed, and discussed with City Hall. He said he would update the Board when plans are more developed.

Commissioner Horn said that he would like the BOC Members and staff to visit the new Westchester County Jail facility in Valhalla, New York. He said it was "state of the art", and noted that its punitive segregation area featured small, individual recreation areas. Chair Kreitman asked Mr. Wolf to coordinate an inspection with DOC staff.

Chair Kreitman turned to correctional health issues, asking first about the pending new contract with Prison Health Services. Mr. Capozziello declined to discuss ongoing negotiations, other than to say that he is confident that a new contract will be in place well before the current contract expires at the end of 2004. Chair Kreitman asked about the Performance Indicators (PI) report for the second quarter, 2004. He said there were four PIs that were “not met”, resulting in fines totaling \$20,000. He asked how the vendor’s performance compared with its performance six months ago. Mr. Capozziello said he did not have information with him, but he said it was comparable. He noted that none of the PIs that Prison Health Services (PHS) failed to meet “impacted health care”. He said they were documentation errors, citing as an example “Intake Physical and History”. He said that if a provider failed to check a box indicating that an inmate had no known allergies, the form would “fail” – even though the information had no bearing on health care services for the inmate. Mr. Capozziello said that several PIs do not measure the quality of health care. He added that some of the PIs may be revised for the new contract.

Mr. Wolf announced that the Board’s Director of Research, Laura Limuli, had undergone surgeries over the summer and was home recuperating. He suggested that “get well” wishes could be sent to Ms. Limuli at the BOC office, and he would forward them to Ms. Limuli.

A motion to renew existing variances was approved without opposition. The meeting was adjourned at 1:48 p.m.