

NEW YORK CITY  
BOARD OF CORRECTION

BOARD MEETING  
SPECIAL HEARING

22 Reade Street  
New York, NY 10007  
June 20, 2019  
9:00 a.m. - 10:00 a.m.

MEMBERS PRESENT:

Jacqueline Sherman, Interim Chair

Stanley Richards, Vice-Chair

Robert L. Cohen, M.D.

Martha W. King, Executive Director

(The public board meeting commenced at 9:20 a.m.)

MS. JACQUELINE SHERMAN: Good morning and welcome to this special public hearing on the Board's proposed rulemaking. The proposed rules, which have been posted publicly since May 13, 2019, include amendments to the Board's existing health care standards' section on patient confidentiality as well as a new healthcare standard section 3-16 on injury reporting. At the outset, I would like to provide background information regarding this rulemaking and also remind everyone of the next steps in the rulemaking process.

In January of this year, the Board published a report summarizing data on serious injuries to people in custody and an audit of serious injury reports. The report documented an 80 percent discrepancy between the number of serious injuries diagnosed by Correctional Health Services ("CHS") and the number of serious injuries reported internally and publicly by the Department of Correction ("DOC" or "Department"). Following up on these findings, the Board planned to impose conditions on a long-standing variance that allowed sharing of injury information between CHS and DOC. However, just prior to the February 9, 2019 public meeting at which the Board was to consider the variance with conditions, the Law Department rendered a legal opinion that the Board's variance was not required. That opinion was based on a new interpretation of the Minimum Standard from which the variance had been sought.

In February, the Board unanimously approved a resolution expressing disagreement with the Law Department's opinion. The Board also announced it would enter rulemaking to clarify the Minimum Standards and implement additional rules to improve injury responses and prevention. In February 2019, the Board submitted draft proposed rules to the Law Department, the Mayor's Office of Operations, and to DOC and CHS for review and comment. BOC received and was responsive to all feedback. The Law Department and Mayor's Office of Operations certified the proposed rules just prior to the May public meeting, after which the Board published the proposed rules to its website, shared them with interested parties, and voted at the May meeting to begin the rulemaking process under the City Administrative Procedure Act ("CAPA").

Among other things, the proposed rules seek to expressly allow CHS to share with the DOC specific diagnoses related to injuries sustained by people while in DOC custody, and address issues identified in the Board's serious injury report by requiring DOC and CHS to comply with data collection and reporting requirements concerning injuries. Under the proposed amendments to section 3-08, CHS would also be able to disclose certain communicable disease diagnoses when exposure has occurred at a facility and it is necessary for CHS to engage in contact tracing to protect the health and safety of exposed individuals. When such disclosures are made, CHS would be required to inform the board within 24 hours. Additionally, in recognition of the fact that individuals in DOC's custody are people first and the circumstance of their incarceration is not their defining feature, the Board has made a commitment to employ person forward language in its Minimum Standards and general communications going forward - a commitment which is also reflected in the proposed rules. Thus, the proposed rules and the Board's rule making efforts going forward will not refer to a person in custody as "inmate."

The Board created posters for the jails that describe the proposed rules and opportunities for public comment. As requested, DOC posted the posters in each jail's law library, visit area, and clinic for people in custody and in each jail's staff locker room. The full rule is also available in each jail's law library and the office of the Deputy Warden of Administration. As noted in the poster, the Board has a dedicated voicemail box that people can call to comment on the proposed rule.

Today we will hear testimony from the public and then after the hearing we will continue to welcome written testimony by mail or email until next Tuesday June 25, 2019. The Board will then make any necessary revisions to the proposed rules and submit final rules for certification by the Law Department and the Mayor's Office of Operations in time for a final vote by the Board at its July 9, 2019 public meeting. Under CAPA, any rules passed by the Board would take effect 30 days after the Board vote.

We will now invite testimony from the public on any or all of the prepared rules. Speakers will be limited to four minutes so please be aware of the time, thank you.

MR. ELIAS HUSAMUDEEN: Good morning. Dear Ms. King and Ms. Sherman, of course I'm Elias Husamudeen, the president of the Correction's Officers' Union, and I represent more than eleven thousand correction officers.

The proposed rulemaking reportedly directed at Health Care Minimum Standards adversely impacts the terms and conditions of employment of correction officers in consequential ways. As often happens, the Board has not considered part of the mandate placed upon it to deal with the care of staff. Many of the terms of the proposed rulemaking actually do harm, whereas the Hippocratic oath calls for the contrary.

Current procedures within the Department of Correction and in facilities maintained by the New York City Health and Hospitals Corporation often place city health employees in what the Board's proposed rule change terms dual loyalty. If a gunshot victim and alleged perpetrator are admitted to a city hospital, the health care professionals are obliged to report matters for forensic evaluations for criminal prosecution or investigatory purposes. Why this should be different with those in custody of the Department of Correction, I don't know. The proposed rule change not only alters decades of practice but likely violate laws, regulations, and straightforward medical obligations owed by those medical professions to serve all servants of the city, including law enforcement officials their assailants and victimizers. The proposed rule change directly harms correction officers in regards to the prohibited of CHS staff being able to treat officers for purposes of aiding in a criminal prosecution. Not only does it disregard the health of the officer, but valuable forensic evidence may also be lost. If this becomes a rule the DOC must enforce, it will not only open a very significant avenue of litigation but also a massive cost as the city must then duplicate CHS services for staff. Quite aside from the collective bargaining agreement with COBA, the city has a moral - and we

would suggest a legal obligation - to set up separate Wards both on and off Rikers Island to treat correction officers who are injured at work, which occurs daily. This without regard to assumptions about criminal culpability or prospective prosecution of that inmate as health care comes first, prosecution being a potential byproduct of inmate activity (i.e., as medical professionals are ignorant of whether injuries may lead to criminal culpability, negativity bias will lead medical professions to avoid helping correction officers rather than face repercussions for doing their job - thus the dual loyalty problem is extended and expanded).

The other problem in the proposed rule, not as significant as this, also include the deprivation of information access to the frontline Offices of mental health indicators which could obviate such results, as which occurred just yesterday. I also annexed an article highlighting the grave need for this information sharing with inquiry by the New York City Council, which after all is the body to which the Board answers.

That's actually my testimony and just to be clear, it's important that when we have incidents in jail, that correctional officers are not denied medical attention because of what this rule may impose on people from the Health and Hospitals Corporation. The reality is, if a New York City police officer or firefighter is injured or hurt in the line of duty or in responding to an emergency, when they go to the hospital they're not denied because there might be a legal conflict with the perpetrator or the person involved. This is a concern of ours as far as the way we read this rule and the effects we feel this rule will have. When it comes to correction officers, we don't want situations where the medical staff feel like they're going to be legally held accountable for something because they're actually providing a service. They have the Hippocratic oath to service everybody, so that's basically our concern as far as the rule.

MR. STANLEY RICHARDS: So you feel like somewhere in those rules it prevents CHS from attending to an officer that might get hurt in the line of duty?

MR. ELIAS HUSAMUDEEN: Yes, we feel that might end up being the interpretation and if that's not what it is, it's important that it's clear. I just feel that if it's not clear to me off how I'm reading it, and I represent the eleven thousand correction officers, how is CHS or Health and Hospital reading it? We already have had incidents where medical staff did not want to treat correction officers involved in situations.

MR. STANLEY RICHARDS: Thank you, and we understand two officers were injured and we hope they're doing well. Do you have any update on them? I'm sorry for sidetracking.

MR. ELIAS HUSAMUDEEN: Yes, the officer assaulted by Munez - the inmate that attacked Guzman Jr. - has a fractured back and a dislocated shoulder. He's at home. A female officer yesterday at AMKC attacked by the mentally ill inmate is doing okay. Thank god. Believe it or not Stanley ... for about three inmates and two officers who were instrumental.

MR. STANLEY RICHARDS: Wow, ok, glad they're ok and our condolences. Thank you.

Mr. MARC STEIER: I just want to clarify something as well that wasn't really made super clear. The dual loyalty - this conflict - is a real one that was written about by Homer Ventures in an article that he published some years ago. The problem lies in servicing everyone in the jail and I'm pretty sure that the treatment in the Health and Hospitals Corporation will be different if you go to an emergency room than if you go to a clinic at Rikers Island. If you're not going to be using reports to potentially investigate and prosecute inmates, then we have a very serious problem here. I don't know if that was ever thought about but I think the Corporation Counsel needs to know about that and the Mayor's Office of Criminal Justice needs to think about it because there might actually be a conflict here built into - which it was unintended perhaps - into the rule change.

The second thing, something we've called for forever, is information sharing like in best practice areas like San Francisco, Cooke County, and Los Angeles. Inmate symptoms that might act out ... inmate who choked officer at AMKC ... could

it have been avoided with sharing some information? I don't know. But for the longest time we've had a concern about getting better access to information at the officer level. I do understand there is some sharing at the upper levels, but that doesn't necessarily mean that anyone on the ground, so to speak, can take advantage of ... 43 percent of the inmates, 50 percent of whom are gonna be bad according to a recent article ... that was annexed to ... that I'll send, they're not strangers to the system and something needs to be done not just between CHS and DOC ... I understand there is definitely institutional conflict there ... but not necessarily between staff who are medical and correction officers, they get along just fine and I just want to make sure that continues.

Mr. ROBERT COHEN: I have a question about the clinical services for your members. It's a large operation, seems to me there's a basis for having clinical services directly for you. The joint use of the clinic area, certainly in the larger facilities creates problems for everybody. So do you have a proposal on that? For example, is the Horizon situation working better for you? I understand theoretically there's a Registered Nurse assigned to Horizon. That's what they tell me well when I go there.

MR. ELIAS HUSAMUDEEN: Well, when Horizon opened we had a few issues as far as the medical staff understanding that they have to provide service to the offices as well as the inmates. We don't have a proposal but I've been doing this a long time and I can stand here and give you a proposal. I mean if they want, they can open up two separate clinics. They could have one clinic to see staff and correction offices and they can have a clinic that will see the inmates. So I mean sometimes, in some of the facilities because the clinic is so small, when we have a large incident it's hard to bring in inmates and the officers. I'm not quite sure as far as the infrastructure and everything is concerned, or the space as to whether it can or cannot be done. In some places it can, and other places it might be a little difficult.

Mr. ROBERT COHEN: It seems to me that there are some situations in ... and you know structurally, I don't know how



the Horizon thing worked, but I know where it came from and I was there ... that having a dedicated ...

Mr. MARC STEIER: At Horizon, you were there when I was there. We were there together and there was a ruckus involving dozens of officers and youth and it was clear to anybody who was looking at it that the facility was not predisposed to be able to treat that scenario. And that scenario wasn't a rare scenario in the beginning. It was one of the many failings of Horizon being up and running before it was really ready. So I don't have a proposal ...

Mr. ROBERT COHEN: But there is a sign there from CHS to support DOC staff?

MR. ELIAS HUSAMUDEEN: Yeah, right now we're not having those issues ...

Mr. ROBERT COHEN: Because there is a dedicated person?

MR. ELIAS HUSAMUDEEN: I'm not sure Bobby that it's a dedicated person, but I do know that they actually see the correction office. I'm supposed to be there later on today ... I can actually get that done.

Mr. MARC STEIER: But as far as the rulemaking and the sharing of information, I'd be more than happy to continue that conversation because I do understand the privacy - confidentiality - mental health ... but we have a superseding problem which is half of the population of Rikers are coming back and they all are MO [Mental Observation], just like the inmate who assaulted the officer yesterday. And it could be that information sharing ... and I'm sure that Steve Martin the Monitor would love to hear about this ... nip in the bud unnecessary incidents.

MR. STANLEY RICHARDS: The last one yesterday was in general population or was it in ...

MR. ELIAS HUSAMUDEEN: It was in mental observation housing, in 11 mod. Which, just to piggyback, this is the reality. When I went to San Francisco to visit the jail there, they did do information sharing with the correction officers. I can say for a fact that if the correction officer who was

assaulted yesterday knew that this particular mentally ill inmate had already did three more years for rape, I'm almost positive that she would not have even allow herself to be at any time alone with this particular person. So the information sharing that's done outside of New York is something that needs to be done here. When I visited the jails, the correction officers were actually at the table discussing treatment and things and they also have different information available to them, even such as triggers. They discuss with the correction officer, "this will trigger this with this particular inmate because of this particular medication" and it's something that we can probably do here.

MS. JACQUELINE SHERMAN: Thank you very much. At this time, we don't have anyone else who wishes to testify. We will leave the hearing open at least until 10 a.m. I should also say we have received written comments from the City's Health and Hospitals and that will be included in the record as will any additional comments written or received on our voice mail up through next Tuesday June 25, 2019.

MS. JACQUELINE SHERMAN: At this time, there are no further members of the public here to testify so we will be closing the public hearing. Just a reminder, you can still submit testimony via mail or email until next Tuesday, June 25, 2019. Thank you very much.