



**BOARD OF CORRECTION
CITY OF NEW YORK**

APRIL 14, 2020 SPECIAL BOARD MEETING MINUTES

Members Present

Jennifer Jones Austin, Esq., Chair
Stanley Richards, Vice-Chair
Robert L. Cohen, M.D.
Felipe Franco
Michael Regan
Steven M. Safyer, M.D.
Jacqueline Sherman, Esq.

Absent

James Perrino

Board Staff

Margaret Egan, Executive Director

Note: In light of the COVID-19 public health emergency, the Board Meeting was held via telephonic and video conference.

I. Opening Remarks

The newly-appointed Board Chair, Jennifer Jones Austin, welcomed everyone to the Special Board meeting and thanked the City of New York for the honor and privilege to serve as Chair of the Board of Correction ("BOC" or "Board"). The Chair thanked Jacqueline Sherman for her hard work and dedication as Acting Interim Chair and said the Board and the public are very appreciative of her efforts. Chair Jones Austin said she looks forward to continuing to work with Member Sherman and other Board members in support of BOC's mission.

Chair Jones Austin recognized the appearance of Cynthia Brann, Commissioner of the Department of Correction (DOC), and Patsy Yang, Senior Vice President for Correctional Health Services (CHS) for their service in the face of the Coronavirus pandemic. The Chair also thanked Executive Director Meg Egan and BOC staff, including BOC staff's Director of Policy and Communications, Bennett Stein, for his work in making this telephonic/video conference possible. Additionally, Chair Jones Austin thanked BOC and

CHS staff, as well as criminal justice advocates, for their hard work and dedication in the face of the pandemic.

II. COVID-19-Related Updates

Chair Jones Austin provided the following COVID-19-related updates. The population incarcerated in the NYC jails has dropped by 1,365 people, which includes several hundred parole violators. The City anticipates releasing approximately 500 more people in custody, comprised of parole violators and City-sentenced individuals. There are several hundred people in custody and several hundred DOC and CHS staff who are COVID-19-positive. To date, two people in custody have died of COVID-19. This reduction in population is an important component of DOC's and CHS's work in response to the pandemic and in preventing the spread of COVID-19 in the jails.

III. CHS Variance Requests

Chair Jones Austin stated that the sole purpose of this Special Meeting is to consider four variance requests from CHS from certain provisions of BOC's Minimum Standards on Mental Health, Health Care and Sexual Abuse and Sexual Harassment. The Board's regularly scheduled meeting in May 2020 will consider other issues in the normal course of BOC's work.

The Chair stated that the situation that DOC, CHS, BOC, people in custody and all of New York City find themselves in requires a thoughtful approach to how the jails operate in this moment. It is critical to allow CHS to make operational decisions to prioritize the care of those in custody during this pandemic. It is also critical to ensure that people in custody have access to the healthcare and mental health care that they are entitled to and to make sure that everyone is safe and well cared for, and that no one falls through the cracks.

The Chair then read out loud each of the four variance requests after which she invited the public to comment on the variance requests.¹

A. Public Comment on CHS Variance Requests

Public comment was heard on the CHS variance requests by Jennifer Parish, Urban Justice Center (UJC); Mary Lynne Werlwas, Legal Aid Society-Prisoners' Rights Project; Paula Marcus, M.D.; Sarita Daftary-Steel, Just Leadership USA; Sharon-White Harrigan; Rosa Palmeri; Kelly Grace Price; Chiraayu Gosrani, NYU law student; Victoria Phillips, UJC/Jails Action Coalition (JAC); Kelsey De Avila, Brooklyn Defender Services (BDS); Hana Yamahiro, Law student advocate and community member; and Julia Solomons, Bronx Defenders.

¹ The four requests and the reasons therefor are discussed in CHS's variance request letter, dated April 13, 2020 and available at: https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/April/BOC_Coronavirus%20Variance%20Requests_041320.pdf

B. CHS Introduction to Variance Requests

Senior Vice President Patsy Yang provided a general introduction to CHS's four variance requests. She prefaced her remarks by stating that she was honored to work with the first-class professionals who comprise CHS and who are putting their own lives at risk to provide medical and mental health services to people in custody.

C. Variance Request re Gonorrhea and Chlamydia Screening of Women

1. CHS Presentation

Dr. Ross MacDonald, CHS's Chief Medical Officer presented CHS's six-month limited variance request from Health Care Minimum Standard § 304(b)(2)(v)(D), which requires, among other things, during intake screening, gonorrhea and chlamydia screening for all women. Dr. MacDonald stated that CHS requests the flexibility to limit such testing to female patients who exhibit symptoms that make testing clinically appropriate. He explained that the variance would enable CHS to test based on clinical presentation and need, as is permitted by the standards for male patients.

2. Board Discussion

Chair Jones Austin questioned why CHS was requesting a variance of six months' duration rather than a shorter period of time. She also questioned why CHS was seeking a variance to limit this screening given that so few women are coming into the jail system. In response, Dr. MacDonald emphasized that neither this variance request, nor CHS's other variance requests, seek to limit healthcare to people in custody; rather, through these variances, CHS seeks to deploy its resources as it sees fit in the face of the COVID-19 public health emergency. He said the variance request represented CHS's attempt to streamline intake and review service delivery generally to understand ways in which CHS can provide care and minimize contact where possible. Dr. MacDonald stated that CHS would use clinical judgment and assess risk factors to decide who should be tested and allow patients to request tests for these diseases.

Dr. Cohen stated his opposition to the variance request. He said that asymptomatic screening for sexually transmitted infections has a very high yield and the consequences of untreated chlamydia/gonorrhea screening are predictable and very serious: infertility and chronic pain. In response, Dr. MacDonald reiterated CHS's reasons for seeking the variance as stated in its April 12, 2020 letter request to the Board.

Dr. Safyer reported that he had spoken with Dr. MacDonald about the variance request and stated that the Board should allow CHS to be very flexible in this moment of crisis, that they are a very good team, and the Board should support them. He also said it was not his sense that we know how long the crisis would go on and, therefore, the Board should grant the variance for one month. Dr. Safyer concluded by urging the release of more people in custody. Members Richards and Regan voiced their agreement that the variance be limited to one month.

3. Board Vote on the Variance

Thereafter, the Chair moved to amend the variance to one month's duration and to approve the variance as amended. After the motion was seconded, the Board approved the amended variance, with six votes in favor (Chair Jones Austin, Vice-Chair Richards, and Members Franco, Regan, Safyer, and Sherman) and one vote in opposition (Member Cohen).

D. Variance Request re Individualized Written Treatment Plans

1. CHS Presentation

Dr. MacDonald presented CHS's request for a six-month limited variance from Mental Health Minimum Standard § 2-04(c)(3), which requires, among other things, that an individualized written treatment plan based upon the evaluation of a treatment team be developed for each person in custody in special housing for mental observation and for all people to whom medication for mental or emotional disorders is prescribed, and that a review of the plan be documented in the patient's chart every two weeks.

Dr. MacDonald stated that CHS requests the flexibility to focus primarily on patient acuity and complete limited initial treatment plans and to have patient encounters documented in progress notes of the electronic health record. The variance — which seeks relief from these documentation requirements — would reduce the amount of time clinicians spend on paperwork and instead, would permit them to focus on providing patient care. Dr. MacDonald emphasized that by this variance, CHS seeks to reduce bureaucratic documentation requirements but not treatment of patients. CHS will continue to document treatment in progress notes and in immediate encounter summaries.

2. Board Discussion

Dr. Safyer asked how CHS is providing mental health care to COVID-19 patients. Dr. Bipin Subedi responded that CHS is providing mental health treatment to these patients even if they are not seriously mentally ill; CHS recognizes that the pandemic has brought about a mental health crisis and patients are feeling isolated and afraid. Patsy Yang added that CHS is launching a hotline for people in custody. Dr. Cohen asked how many seriously mentally ill people are in custody. Dr. MacDonald responded that he would get back to the Board with that information. Board Member Franco asked about CHS efforts to increase mental health engagement, including programming on tablets. Dr. MacDonald responded that he believed DOC had expanded their tablet program. Board Member Franco asked for more information on this initiative.

3. Board Vote on the Variance

The Chair moved to amend the variance to one month's duration and to approve the variance as amended. After the motion was seconded, the Board unanimously approved the amended variance, with seven votes in favor (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Regan, Safyer, and Sherman) and none in opposition.

E. Variance Request Re Frequency and Timing of Mental Health Encounters

1. CHS Presentation

Dr. MacDonald presented CHS's request for a 6-month limited variance from Mental Health Minimum Standard § 2-05(b)(2)(i-ii), which requires, among other things, that (i) no prescription for psychotropic medication shall be valid for longer than two weeks; and (ii) every person receiving psychotropic medication shall be seen and evaluated by the prescribing psychiatrist, or, in cases of emergency when a physician other than a psychiatrist prescribes medication under § 2-05(b)(1)(i) by the reviewing psychiatrist, at least once a week until stabilized and thereafter at least every two weeks by medical personnel. An existing continuing variance from these sections, in effect since November 2005, allows psychiatrists to see and evaluate stable adults on psychotropic medication in general population at least every 28 days rather than every 14 days.

Dr. MacDonald stated that CHS requests the flexibility to see non-seriously mentally ill adults in general population during a period of up to every eight weeks and to see patients in mental observation units within two weeks after medication change. The frequency and timing of encounters within each eight-week period would be determined jointly by the provider and his/her non-seriously mentally ill patient. Taking into consideration the patient's clinical needs and wishes, the clinical recommendations of the provider would be made in a way that safely support and encourage patient engagement. Clear guidance would also be given as to how to seek care if the patient's situation changes.

2. Board Discussion

Dr. Cohen proposed a condition on the variance; namely, that CHS report the number of mental health encounters for the one month before implementation of the variance and for the one month after implementation. CHS responded that the eight-week time frame for mental health encounters does not lend itself to such reporting.

3. Board Vote

The Chair moved to amend the variance to one month's duration and to approve the variance as amended. After the motion was seconded, the Board unanimously approved the amended variance, with seven votes in favor (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Regan, Safyer, and Sherman) and none in opposition.

F. Variance Request re Limitation of Encounters with Victim Advocates

Dr. MacDonald presented CHS's variance request for a six-month limited variance from Sexual Abuse and Sexual Harassment Minimum Standard § 5-10(d), which requires rape crisis intervention and counseling services to be offered and delivered to people in the facility in which they are housed by qualified victim advocates.

Dr. MacDonald stated that CHS would continue to take reports from patients and communicate such information to DOC's Investigation Division, but in an effort to minimize staff-patient contact, request the flexibility to limit encounters with victim advocates. Victims of sexual assault would continue to have in-person access to medical and mental health staff with regard to these issues.

2. Board Discussion

Board members asked about the number of encounters between victims and victim advocates. Dr. MacDonald responded that CHS seeks the variance to minimize the extent of staff-patient contact in the face of the COVID-ID-19 outbreak and not to cut down on the number of such encounters.

Board members discussed whether CHS could set up telephonic communications between victims of sexual assault and victim advocates. Dr. MacDonald responded that CHS could set up teleconferences within the next few weeks by piggybacking on its existing telehealth services.

3. Board Vote

The Chair moved to amend the variance to one month's duration and to add the following condition: CHS shall offer and deliver rape crisis intervention and counseling services by qualified victim advocates via teleconference by May 14, 2020, and report to the Board on its efforts at the May 14, 2020 public meeting. After the motion was seconded, the Board approved the amended variance with the condition, with six votes in favor (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Regan, Safyer, and Sherman) and one vote in opposition (Member Cohen).

IV. Conclusion

Chair Jones Austin stated that the Board would hold its regularly scheduled public meeting on Tuesday, May 12, 2020. The Chair then adjourned the Special Meeting.