NEW YORK CITY
BOARD OF CORRECTION

March 11, 2013

MEMBERS PRESENT
Gerald Harris, Chair
Greg Berman
Robert L. Cohen, M.D.
Michael J. Regan
Pamela Silverblatt, Esq.
Milton A. Williams, Jr., Esq.

Excused absences were noted for Vice Chair Alexander Rovt, PhD, and Pamela S. Brier and Catherine M. Abate, Esq.

DEPARTMENT OF CORRECTION
Dora B. Schriro, Commissioner
Evelyn A. Mirabal, Chief of Department
Ari Wax, Sr. Deputy Commissioner
Thomas Bergdall, Esq., Deputy Commissioner and General Counsel
Matthew Nerzig, Deputy Commissioner of Public Information
Sara Taylor, Chief of Staff
Martin Murphy, Deputy Chief of Staff
Erik Berliner, Associate Commissioner
Antonio Cuin, Warden
Carleen McLaughlin, Legislative Affairs Associate

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Amanda Parsons, Deputy Commissioner
Homer Venters, M.D., Assistant Commissioner, Correctional Health Services
Ross McDonald, M.D., Medical Director
Daniel Selling, Psy.D., Executive Director of Mental Health/Substance Abuse Treatment
George Axelrod, Director, Risk Management

OTHERS IN ATTENDANCE
Joseph Antonelli, OMB
Warren Burke
Kevin Collins, Doctors Council SEIU
Jay Cowan, Corizon
Allan Feinblum, Jails Action Coalition
C. Fiorentini, NYC IBO
Leah Gitter, Jails Action Coalition
David Gonzaloez, Jails Action Coalition
Susan Goodwillie, Jails Action Coalition
Susana Guerrero, State Commission of Correction
Sarah Kerr, Legal Aid Society

Neil Leibowitz, M.D., Director, Mental Health, Corizon
Jennifer Parish, Esq., Urban Justice Center/ Jails Action Coalition
Margaret Pletnikoff, Office of Management and Budget
Michael Rooney
Nate SantaMora, Doctors Council SEIU
Richard Sawyer, Jails Action Coalition
Luke Schram, Jails Action Coalition
William Stongash, NYCC
Milton Zelermyer, Esq., Legal Aid Society, Prisoners' Rights Project
Michael Zuckerman, Corizon

Chair Gerald Harris called the meeting to order at 9:15 a.m. A motion to adopt the minutes from the Board's March 11, 2013 meeting was approved without objection.

Chair Harris welcomed the newest Board member, Pamela Silverblatt, who expressed her pleasure at joining the Board. She described her background as follows: for the past five years she has been the Vice Chancellor of Labor Relations for the City University of New York, prior to that, she worked in the Mayor's Office on labor relations issues, and before that, she spent many years at the Health and Hospitals Corporation.

Chair Harris acknowledged the retirement of the Board's long serving Director of Research, Laura Limuli, who has worked at the Board since 1981. Post-retirement, she has been volunteering in the office archiving documents. He thanked her for her valued service.

Chair Harris welcomed the Board's two new employees, Felix Martinez, the Director of Field Operations, and Chai Park, the Director of Research and Analysis. He asked that they introduce themselves. Mr. Martinez stated that he has twenty years of criminal justice experience, with the New York City (NYC) Criminal Justice Agency as a shift supervisor and an ROR interviewer, and at the Queens District Attorney's Special Prosecution Division, working with at-risk youth. He expressed his gratitude to Ms. Potler and Ms. Masters for the opportunity to work at the Board. Ms. Park reported that before joining the staff, she worked as a lawyer with the NYC Police Department, prosecuting police corruption and misconduct, and prior to that she worked as an attorney with the Juvenile Rights Practice of the Legal Aid Society. Ms. Park added that she is thrilled to be working at the Board. Executive Director Cathy Potler added that Ms. Park also has a Masters of Public Health from Yale University and has experience analyzing access to healthcare issues.

Chair Harris stated that at the last Board meeting concern had been expressed about the speed with which investigation by the NYC Department of Investigation (DOI) had progressed with regard to incidents at the George R. Vierno Center (GRVC). He reported that with Member Greg Berman and Ms. Potler, he met with the Commissioner of DOI and several of her staff to discuss these concerns. Chair Harris reported that the Commissioner assured them that the investigation was progressing and would reach a conclusion relatively soon. Chair Harris further stated that the Bronx District Attorney's Office had examined the homicide of Jason Echevarria, and has apparently determined there is not a basis to bring the matter before a grand jury. The matter is now being reviewed by the Department of Correction's (DOC) Investigations Division which will determine whether administrative action will be taken.

Member Bobby Cohen, MD, stated that Jason Echevarria's homicide occurred in August 2012, and the delay is problematic. He asked if the Board can do anything about this "very tragic and completely preventable" death. The Chair responded that the matter would be investigated and noted that convening the Prison Death Review Board (PDRB) remains an option, as does the use of subpoena power.

Chair Harris reported that he was advised by DOC that in response to an increase in violence and slashings, notices have been posted in the jails advising inmates that if they are

found to be in possession of weapons, they may be deprived of contact visits for the duration of their incarceration. That same consequence may follow visitors found with these items. The notices state that due process will be provided. The Chair stated that case law in this area provide that notice and an opportunity to respond are required, and that DOC must demonstrate a nexus between the proscribed conduct and the contact visits that would pose a risk to the safety or to the security of the jail. , Chair Harris further explained that if the inmate disagrees with the decision to deprive him or her of contact visits, the inmate may file an appeal with the Board or bring an Article 78 in the court to vacate that determination. Chair Harris stated that the Board may act on any appeals that may emanate from these DOC actions and that there is a right to limit contact visits, as long as it is done with due process and the requisite showing of a nexus is made. Dr. Cohen reiterated that individual determinations must be made on the appeals, despite the DOC Commissioner's assertion that security trumps all and that the Department makes the ultimate determination. Chair Harris responded that, as he read the exchange with the Commissioner, she was saying that she has the authority to implement procedures, but certainly not the ability to proscribe appeals. Member Michael Regan asked the Commissioner if any of her predecessors had implemented anything similar to this. The Commissioner answered that "close custody" was the last time a similar attempt had been made by the Department. She went on to say that DOC has not yet implemented the policy change. Mr. Regan asked if supervisors would be involved in the decision-making. The Commissioner responded that they would.

Chair Harris noted that at the last Board meeting, the staff had been directed to investigate and report on the Mental Health Assessment Unit for Infracted Inmates (MHAUII). That study began, and we have since learned that MHAUII is probably being eclipsed, and a substitute form of housing - the Restrictive Housing Unit (RHU) - will be expanded. Board staff have refocused the study on the RHU. We have obtained funding to retain a rather eminent expert, Dr. James Gilligan, a psychiatrist at New York University (NYU) Medical School, to assist with this study. The hope is that his study will address the issues with solitary confinement in general and solitary confinement for inmates with mental illness. Dr. Cohen added that he has met with Dr. Gilligan, and that he is an eminent psychiatrist in the field of violence in jails, and has done important work nationally, for instance, in San Francisco, where they set up units to solve the kinds of problems that NYC faces. He is also a member of the law faculty at NYU.

Chair Harris asked Commissioner Schriro to discuss the Department's use of temporary cell restriction (TCR). She responded as follows:

> The Department tries to intercept young adults who are engaged in misconduct before it turns into an incident that would result in an infraction and in an injury to other inmates or to staff. There has been a significant improvement in the TCRs that have been issued since our last meeting. We count activity in two ways, the number of incidences that are intercepted, but also the number of individual TCRs that have been imposed on specific inmates. There were two incidents where TCR was not the appropriate measure and that more traditional methods, including either a lockdown of the housing unit or individually issued infractions would have been more appropriate.

Robert N. Davoren Center (RNDC) Warden Antonio Cuin, Jr. reported on TCR as follows:

> Since October 2012, a total of 36 TCRs have been implemented involving 76 inmates, 18 of whom have since infracted. One of the two incidents mentioned by the Commissioner that was not a good choice for TCR involved two inmates who were actually fighting and not horseplaying. The second incident involved 18 inmates horseplaying. When 18 inmates are involved, TCR is not an appropriate sanction. Approximately 50 TCRs were issued in February and 13 thus far in March. I have been going to roll call to speak with the staff on how to properly use TCR to reduce infractions and to prevent more serious incidents from occurring.

Chair Harris asked Warden Cuin if the inmates were told that they have a choice, and Warden Cuin responded in the affirmative. He stated that a captain is called to the area, and inmates are given a choice whether to be infracted or be placed in TCR.

Mr. Regan stated that he had recently toured GRVC and had encountered a captain who took the time to speak with each inmate. He emphasized that it was heartening to see such action by DOC staff.

Commissioner Schriro explained that interpersonal skills should always be used to try to de-escalate problems. She went on to state that creating steady posts and having regularly assigned officers and supervisors gives DOC a much more consistent result in terms of shared expectations, as well as a better understanding of the inmates in our care.

Commissioner Schriro reported as follows on MHAUII:

> We have made a careful review of MHAUII and have found that it doesn't work well for a variety of reasons. We have piloted an alternative unit called the Restricted Housing Unit (RHU), which is based on a behavioral program, designed by our colleagues at DOHMH. The first RHU was for male adolescents because of the frequency with which they were incurring infractions and because behavioral initiatives are particularly effective with younger adults. None of the adolescents who have completed the program have incurred re-infraction, which underscores the benefit of this particular approach. Several months ago the same program was started for the adult males. The rate of adults going through the program has been slower. It’s also a newer initiative, but we are seeing similar positive long-term results. The plan is to continue to replace MHAUII beds with RHU beds, so that MHAUII will be discontinued at the earliest opportunity. There are other efforts the Department is undertaking that I look forward to discussing with the Board in far greater detail by the next meeting.

Dr. Cohen discussed RHU as follows:

> The Anna M. Kross Center (AMKC) RHU has been opened since October 2012. As of February, there were 51 admissions and of that group, there were 35 self-harm gestures and 12 self-harmed individuals. Only nine of the 51 participants actually graduated - 80% of the people entering this year don't fulfill the expectations of Corrections and the Department of Health. Upon a recent visit to RHU, the census was 15 or 16 people in a 30-cell unit. The vast majority of available cells were not filled because the AMKC DOC staff could not find people to fill this unit even though there were hundreds of people in AMKC who were awaiting MHAUII placement. Most officers on the floor were not steady and had not been provided mental health training. Additionally, I was told by the Mental Health Unit Chief and the Deputy Warden that the first week is called "hell week." If the Department is trying to develop a different approach to MHAUII, the notion that you take people who you know are going to have problems being locked up 23 hours a day - and you lock them up 23 hours a day - has an inherent contradiction. It would be preferable to give these mentally ill inmates four hours out of their cells initially, and if they participate in the program, give them more time out. And if they don't participate, perhaps take away an hour. But to start off with something that everyone understands will be "hell week" does not seem like a great idea.

Dr. Cohen added one last concern. While he complemented the Commissioner for improving the policy on "owed bing time," Dr. Cohen opined that he wished the Commissioner would get rid of this policy entirely. He did not see the legal basis and the usefulness of imposing fifty or a hundred days of "owed bing time" for persons who return to the jail system.

Commissioner Schriro responded as follows:

> The RHU program needs to be of a certain intensity and duration in order to make behavioral inroads. Some inmates can complete the phases quicker and others take longer. But if the infraction time that is imposed is less than the time to complete the program, no one is kept in the unit beyond the amount of time imposed. The completions do not speak to an individual's failure to complete the program. We recognize that our systems would work better if there was more bridging of activities so that certain services were not just available in some settings, but could be available in a continuum consistent with custody management. That's one of the numbers of reforms, which the two departments are addressing together. The Department has done considerable work in expunging historical time owed greater than a year except for time that was accrued for assaults on other inmates or staff. There have been several thousand inmates whose cases have been reviewed and expunged. That data will be provided to the Board. As incidents of violence increase in the jail, everything must be balanced. It must be quite clear to the population that there are consequences.

Mr. Regan asked Commissioner Schriro to explain the matter of the unauthorized person who was able to have access to multiple buildings on Rikers Island and to the Manhattan Detention Center for some time.

Commissioner Schriro responded as follows:

> Because this matter is under active investigation by the Department, being reviewed by DOI, and now an active criminal prosecution, I'm going to be very limited in my remarks. There is an individual, Matthew Matagrano, who presented identification that should have afforded him access to an attorney-client visit area only. In each jail, although the locations differ, the attorney-client visit areas are always outside of the secure perimeter. The fact that he got beyond that area and within the security envelope is the subject of the review. I have been in touch with the Chair about a related matter that has to do with a BOC standard that deals specifically with access of attorneys, attorney assistants, and other individuals. Our General Counsel worked with BOC staff on this matter.

Chair Harris stated there has been some really useful and good communication between BOC staff and DOC General Counsel to ensure that the access to appropriate legal services has not been eroded by this unfortunate incident. He added that as steps are taken to tighten security, it should not infringe on the rights of inmates to maintain adequate contact with their appropriate representatives. Ms. Potler added that under the Standards, the Department would not in any way have been required to give the "impostor" a legal assistant pass because the rule is very clear that any legal assistant or paralegal must be working under the supervision of an attorney who is representing a prisoner on Rikers Island.

Dr. Homer Venters, Assistant Commissioner of DOHMH Correctional Health Services announced that all services at Bellevue Hospital have been restored, including outpatient ambulatory care and inpatient medical and mental health services. Ms. Potler asked about the status of the waiting list for out-patient specialty clinic care that had developed while Bellevue Hospital was closed. He answered as follows:

> When we lost the Bellevue services, we had to determine which ambulatory care visits were the most urgent. Even during the last few weeks when sending patients to other HHC hospitals, we were still getting about a quarter to a third of our normal ambulatory visits done. When Bellevue re-opened, we had the brand new referrals that the providers had been generating at their usual pace and some pending referrals from before the storm. We had to clean up the backlog while going forward identifying the sickest person today. That cleanup has been ongoing. Most of that work is completed. We have caught up on the emergent and urgent referral, or at least have dates for return to service, and are still catching up on routine referrals.

Dr. Venters discussed the work that DOHMH is doing regarding traumatic brain injury (TBI) screening as follows:

> TBI is actually quite applicable to conversations that we have had about violence. About a year ago, DOHMH engaged with DOC in thinking about TBI among adolescents. We believe that a lot of adolescents and adults come into jail with significant histories of TBI. This is important because two of the most important manifestations of TBI are emotional disregulation and impaired processing speed, which means you can't control your emotions and you can't follow directions. These are two very serious complications for people who find themselves in jail. About nine months ago, our staff screened about 450 adolescents, men and women. We found about 50% of the adolescents coming into the jail system have significant TBI as compared to the community rate of about 9%. It was even higher among the women, where it's about 60 to 65%. This shows us that we have a real serious organic medical problem among the adolescents. From a medical standpoint, except for very serious brain injuries, there isn't much that doctors can do. Teachers and social workers are better able to help the adolescents with TBI. We often end up giving someone a mental health diagnosis, who does not have a mental health problem, but rather TBI. These same patients run afoul of the DOC rules, get infractions, and generally have a difficult time in jail.

Chair Harris asked whether there was any indication that these conditions are attributed to child abuse. Dr. Venters replied that he thinks more study is needed. DOHMH believes that the higher prevalence among women may be explained by intimate partner violence, domestic violence, and sex workers, who are routinely physically and emotionally traumatized. Chair Harris asked if a lack of judgment stemming from TBI might contribute to the increased number of inmates getting infractions. Dr. Venters agreed, stating that if one can not follow rules or control one's emotions, tone will have trouble on the streets and in the jails. He added that DOHMH has identified new incidents of TBI that have occurred in the jail system.

Dr. Venters continued:

> We must take this information and work collaboratively with DOC and the Department of Education (DOE) by first educating ourselves, our patients, and our colleagues. Most of our patients have never heard about TBI. They are walking around either with a mental health diagnosis or a "knucklehead" label. They need to understand the effects of TBI on their behavior. The Center for Disease Control (CDC) recommends that when a student with TBI returns to school, the student should slowly integrate into the social mainstream. In the jail system, this is not possible. DOHMH, DOC, and DOE can work together collaboratively to figure out ways to accommodate this health problem.

Mr. Regan asked Dr. Venters to explain more about the TBI issue. Dr. Venters stated that in Texas there has been a successful program to reduce recidivism by focusing on TBI issues. They have a very structured TBI program for teens on probation which has been

successful in part because the teens learn about the TBI diagnosis and they are less disassociated with what is going on in their life and why.

Dr. Venters requested that the Board renew the following two variances: (1) authorizing psychiatrists to see and evaluate stable adult patients on psychotropic medication in general population at least every 28 days, rather than every 14 days, and (2) authorizing the use of interferon gamma release assays (IGRA) for tuberculosis screening at the Rose M. Singer Center (RMSC). A motion was made to grant both variances for four months, and it was unanimously passed.

A motion was made by DOC to renew all existing variances, which was passed unanimously. The Chair adjourned the meeting at 10:15 a.m.