

**NEW YORK CITY
BOARD OF CORRECTION**

January 11, 2001

MEMBERS PRESENT

John R. Horan, Acting Chair
Canute C. Bernard, M.D.
Stanley Kreitman
David Lenefsky

Excused absences were noted for Board Members Louis A. Cruz, Barbara A. Margolis, Richard Nahman, O.S.A., and David A. Schulte.

DEPARTMENT OF CORRECTION

William Fraser, Commissioner
Gary Lanigan, First Deputy Commissioner
Antonio Figueroa, Deputy Commissioner
Roger Jefferies, Deputy Commissioner
Robert Dash, Bureau Chief
Elizabeth Loconsolo, General Counsel
William Hurley, Acting Chief of Inspectional Services and Compliance Division (ISCD)
Roger Parris, Assistant Commissioner
Elizabeth Myers, ISCD
Captain Darryl Harrison

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Jr., Executive Director
Michael Tannenbaum, Chief Operating Officer
Patrick Brown, M.D., Medical Director
Arthur Lynch, Mental Health Director
John W. Russell, Assistant Chief Operating Officer
Robert Berger, Director, Service Delivery Assessment

OTHERS IN ATTENDANCE

Sasha Bardey, M.D., Mental Health Director, Prison Health Services, Inc. (PHS)
Mary Ellen Bolton, Program Director, PHS
Gerald F. Boyle, President, PHS
Regis Dorsh, Executive Vice President, PHS
Dexter Filkins, *New York Times*
Carl Keldie, M.D., Corporate Medical Director, PHS
Latonia McKinney, Finance Division, City Council
James Neal, M.D., Medical Director, PHS
Dale Wilker, Prisoners' Rights Project, Legal Aid Society
Chris Winward, Investigations Division, City Council
Milton Zelermyer, Prisoners' Rights Project, Legal Aid Society

Acting Chair John Horan called the meeting to order at 1:03 p.m.. He asked Correctional Health Services' (CHS) Executive Director Ernesto Marrero to introduce new colleagues to the Board Members and to discuss key elements of the new contract with Prison Health Services, Inc. (PHS). Mr. Marrero presented the following individuals from PHS: Gary Boyle, President; Dr. Carl Keldie, Corporate Medical Director; Mary Ellen Bolton, Program Director; Dr. James Neal, Medical Director; Regis Dorsch, Executive Vice President, and Dr. Sasha Bardey, Mental Health Director.

Noting that the PHS contract differs significantly from the contract with St. Barnabas Hospital (SBH), Mr. Marrero discussed several elements of the PHS contract, reporting that:

- The PHS contract has a different structure. It is not a "capitated rate" contract, because in the previous contract questions had arisen about whether capitation served as an incentive not to provide appropriate care.
- The Health and Hospitals Corporation (HHC) deals directly with the City for any costs incurred for patient care at a hospital. In the SBH contract, the vendor was responsible for covering the cost of any in-patient hospital services, which raised concerns about creating an incentive not to send patients to hospitals.
- The number of performance indicators has been increased to 40, and in most instances PHS must be in full compliance, not 95% as generally was required in the previous contract.
- HHC can remove from the contract certain services, such as laboratory services or the provision of care to an entire facility, if HHC finds that the vendor is not performing those services to the standards set in the contract. If HHC only can provide the service at a higher cost, the additional costs incurred can be deducted from the next payment to PHS.
- Unlike the SBH contract, the PHS contract establishes mandated staffing patterns. Absences by doctors and nurses or psychiatrists and mental health specialists in certain key areas, such as infirmaries, the specialty clinic and the Mental Health Center, will immediately result in liquidated damages assessed per position per tour. HHC is authorized to deduct the assessed liquidated damages from the next contract payment to PHS. Noting the importance of this provision, Mr. Marrero reported that damages from the third quarter of 1998 have yet to be collected from SBH.

Mr. Marrero said that CHS staff had analyzed each facility and determined the appropriate staffing patterns per tour. Mr. Marrero said that, excluding "mandatory staff" previously described, each facility's staff were divided into four units: medical (includes physicians, physician assistants and nurses), mental health, medical "other" and administrative.

He said that the contract permits one absence per tour for any unit with 14 persons or less, and for any unit with more than 14 persons, two absences per tour are allowed without PHS incurring a fine. In addition to these requirements, each facility must have 90% of its staff working at all times. Mr. Marrero explained that PHS will be charged \$1,000 for every person per tour under the mandated staffing requirement for the medical and mental health units, and \$500 per person per tour for the other two units. (Mr. Marrero distributed a document to help illustrate this). He reported that the contract allows for adjustments to the staffing levels after six months of operational experience with the contract. Mr. Marrero stated that PHS had had some initial problems providing appropriate staffing, and that there may be some issues regarding liquidated damages during the first two weeks of operation.

Board Member Stanley Kreitman raised the issue of hospitalization costs, asking who pays for inmate hospitalization and escort officer costs. Mr. Marrero responded that the officer costs are born by the Department of Correction which have remained relatively constant under both contracts, and added that HHC and the Office of Management and Budget (OMB) will "deal" with the hospitalization costs. Mr. Kreitman stated that the answer was "too vague" and asked if anyone had estimated the annual cost. Mr. Marrero responded that the last estimate was \$25 million.

Board Members David Lenefsky and Dr. Canute Bernard asked if physicians can make a medical judgment about sending a patient to the hospital without having to seek approval from the urgicenter. Mr. Marrero responded that every on-site medical director has the authority to do whatever he or she thinks is proper in providing medical services. He stated that urgicare no longer performs a "gatekeeper" function and is available to perform minor surgical procedures and other unspecified services.

After complimenting CHS on its excellent job drafting the contract, Mr. Lenefsky asked how the contract will be monitored to evaluate whether or not the performance indicators are being satisfied. CHS Director of Service Delivery Assessment Robert Berger explained that there are two types of performance indicators, medical, which are directly connected to chart reviews, and administrative. Mr. Berger said that PHS is required to report its performance findings to CHS staff who will audit them. In addition, Mr. Berger stated that CHS will conduct independent assessments of PHS by conducting chart reviews. Mr. Lenefsky asked if CHS had adequate staffing to perform these audits. Mr. Berger responded that there are 20 persons, including six nurses, two physicians and six audit analysts. Mr. Marrero added that CHS will conduct chart reviews of a sampling of new admissions because the pool is so large. However, when the inmate-patient "universe" is small, such as pregnant women or diabetics, chart reviews will be conducted on every chart in the category. PHS President Boyle stated that PHS wants to monitor its services in order to identify problems and correct them so that there are no negative outcomes.

Mr. Lenefsky asked what were the most difficult problems faced during the first two weeks of the contract. Mr. Boyle responded that he would rate PHS' performance as an A+ for

effort and a B for execution. He stated that much still needs to get done, noting that the transition was made difficult by PHS having to hire 950 employees in three weeks, the logistics of having SBH in the space up until the last minute, and having to move in during a snowstorm. Mr. Boyle reported that in some areas PHS needs to increase staffing. For instance, LPNs have been particularly difficult to find. Mr. Lenefsky asked about the status of the electronic medical charts. Mr. Boyle responded that it has yet to be decided and that no date has been set by which an electronic medical chart system must be ready for implementation.

Mr. Lenefsky asked if the top twelve PHS administrators are in place. Mr. Boyle answered in the affirmative. Dr. Keldie spoke glowingly about key PHS central office staff whom he described as having the proper skill sets, philosophy and experience necessary to do an excellent job. Mr. Marrero added that providers on Rikers Island have told him they feel as though they are being given a new opportunity. He expressed his belief that with the proper leadership and management in place, better care will be provided on the Island.

Mr. Lenefsky asked Mr. Marrero if his top twelve administrators are in place. Mr. Marrero said that more than 300 CHS staff are working, with only one vacancy.

Mr. Horan thanked Mr. Marrero for bringing representatives of PHS to the meeting and wished them well. Mr. Marrero asked if they could be excused. All CHS and PHS representatives left.

Minutes from the December 14, 2000 Board meeting were approved unanimously. Mr. Horan reported that the Board's review of the Minimum Standards will continue in 2001. He said that suggestions for revisions to the recreation provisions had been circulated to the Board Members, and noted that the Board would soon contact the Department for its input.

Mr. Horan said that in late December, the Board sent CHS a letter summarizing thirteen correctional health case histories, and hoped that the information would assist both the new provider and CHS's contract monitors.

Mr. Horan asked Commissioner Fraser to discuss an incident that occurred on Christmas Day at ARDC. Commissioner Fraser reported as follows:

Plumbing problems in a housing area made it necessary to move its adult general population inmates into a then-closed modular dormitory until the plumbing problem could be repaired. When the inmates arrived, several complained and a captain responded to the dormitory. As an inmate who had attempted to incite the others to begin a disturbance was being taken from the area, he assaulted staff. Several other inmates threw chairs at the "B" gate door. The captain activated an alarm, and a response team arrived, encountering some resistance at the door. There was no barricade. A total of six to eight inmates were involved. A second response team went to the area, and sprayed some OC gas. This caused the

disturbance to end and staff removed the inmates from the dormitory to the receiving room.

There was a breakdown in how the incident was reported. The Tour Commander's initial description of the situation to the facility's Control Room was erroneously communicated to the Department's Central Operations Desk (C.O.D.) by a captain and thereafter by an officer at the facility. When the Chief of Security was notified, he was told that there was a barricade situation involving ninety inmates. The Chief called for activation of an Emergency Mobilization Plan (E.M.P.), which was appropriate for a barricade. Shortly thereafter, it was determined that the situation had been described erroneously and the E.M.P. was terminated.

Several staff and inmates suffered minor injuries, consisting of soft tissue injuries of exposure to the OC gas. Several people were sent to the hospital as a precautionary measure. The Commissioner and BOC Executive Director Richard Wolf responded to the incident. An investigation continues. Staff at the facility who were responsible for the communications breakdown will be held accountable.

Acting Chair Horan next asked for comments regarding Judge Baer's recent ruling in the *Benjamin* case regarding environmental health issues. Commissioner Fraser said he was studying the decision, and noted that he did not agree with all of the findings. He said that DOC had come a remarkably long way in improving sanitation and environmental health in the jails. Mr. Lenefsky asked which conditions the Judge had determined rose to the level of constitutional violations. The Commissioner identified heating and mattresses, and noted that one facility has a loud generator adjacent to some housing areas. He noted that the generator is being removed. General Counsel Elizabeth Loconsolo said that a recent press report failed to note that most of the *Benjamin* orders had been terminated, including those governing plumbing, personal hygiene items, laundry and laundry detergent, and vermin. The Commissioner added that DOC was preparing a plan to address the Judge's concerns. Mr. Wolf asked Ms. Loconsolo to explain to the Members the requirements of the Prison Litigation Reform Act (PLRA) once a finding of an ongoing constitutional violation is made. Ms. Loconsolo said that after two years the Department can move to terminate a new order. Mr. Wolf said that this aspect of the PLRA was a significant departure from past practice, noting that some *Benjamin* consent decree provisions had been in place for more than twenty years.

Mr. Horan noted that a homicide had occurred yesterday and asked for a preliminary report. Commissioner Fraser said that two inmates had been housed together in a therapeutic cell in a mental observation area at the Anna M. Kross Center (AMKC). One died of multiple head trauma, believed to be the result of an inmate on inmate fight. The Commissioner said that preliminary investigation suggests that staff was not

involved in any way, nor is there any information that staff failed to respond swiftly and properly. He said that the decedent expired at Elmhurst Hospital, and noted that the matter is under investigation by the Police and the Office of the District Attorney who will determine if and when an arrest will be made. Mr. Horan asked why two inmates were housed in one cell. Commissioner Fraser said that there are several "therapeutic" cells on Rikers Island. He said that the mental health provider tells DOC which inmates are eligible to be housed in these cells, although mental health does not determine which inmates are housed together. Board Member Stanley Kreitman said that based upon what he read in the newspapers this morning, the decedent was incarcerated for violation of an Order of Protection and not violent, whereas the other prisoner was reported to have a history of violence. Commissioner Fraser repeated that DOC did not decide who was eligible for housing in a therapeutic cell, and added that the matter is under investigation. The Commissioner said that the continued use of therapeutic cells will be reviewed. Mr. Lenefsky, noting that DOC does not place two general population inmates in one cell, asked for the psychiatric rationale for using therapeutic cells to house together two inmates with identified mental problems. Commissioner Fraser said he would have to defer to CHS's Dr. Lynch for an explanation of the therapeutic value. Mr. Wolf noted that the cell in question was a double-sized cell, and not designed for one inmate. Dr. Bernard asked whether a clinician had made a clinical decision to house the inmates together. Mr. Wolf said it was not clear that a clinician decided that the inmates should be housed together, but rather that a clinician concluded that each inmate could be housed in a two-person cell. He added that BOC had been told over the years that the jumbo cells were used for inmates with mental health problems who had been identified as at risk for hurting themselves. Mr. Wolf noted that investigators are reviewing a form with a section that is filled out both by mental health staff, who indicate the type of housing for which an inmate/patient is eligible, and also by DOC staff, who determine the inmate's bed assignment. Dr. Bernard asked who monitors the two-person cells. Commissioner Fraser said that there is a "B" officer in the area and two inmate suicide prevention aides. Mr. Lenefsky asked that DOC reconsider the policy of assigning two inmates to a jumbo cell. Commissioner Fraser said that DOC executive staff already are doing so, and will meet with Mr. Marrero and other CHS staff to decide whether to continue the policy. Mr. Wolf said that there is a discrepancy in the times when DOC reports it contacted medical staff to respond to the scene, and when medical staff reports it was contacted. He asked whether DOC has investigated new technology to synchronize clocks in the jails. Commissioner Fraser said that log entries are sometimes delayed during emergencies. He said he was trying to get staff to make log entries in five-minute intervals, and said that staff must re-create the times to the best of their abilities. He concluded by saying he would look at technological developments. Ms. Potler asked if DOC was satisfied with the timeliness of the medical response. Commissioner Fraser said that preliminary investigation found response times to be appropriate. Mr. Wolf said that he heard the crime scene was very bloody, and asked about the well being of responding DOC staff. Commissioner Fraser said that one officer who attempted to aid the victim got upset when the inmate was removed to the hospital. He said that three minutes later, the officers in the area were relieved from their posts, changed into civilian clothes, and were counseled

by a priest and a mental health counselor. The Commissioner noted that union officials thought DOC's response in assisting the officers was not quick enough.

Acting Chair Horan raised the issue of the strip-search decision, and asked who reviews new policies before they are implemented by the Department. Ms. Loconsolo said that when a new policy is implemented, it is reviewed by the Legal Division. Mr. Horan asked if the strip-searching policy had been reviewed by the Legal Division. Ms. Loconsolo reported that either the Mayor or former Commissioner Kerik said on the news that in 1996 DOC was replacing police officers in the pre-arraignment pen areas. She said that policy of strip searching always was in place in the Department. Its implementation in the pre-arraignment pens was not reviewed by the Department. Mr. Wolf said that Board Member David Schulte requested that he ask the following question: when a responsibility shifts from one City agency to another, is there any City coordination of that process? Mr. Horan asked whether the question was referred to the Law Department. Mr. Wolf said Mr. Schulte had mentioned the Criminal Justice Coordinator. First Deputy Commissioner Gary Lanigan said he had been involved in several inter-agency transfers of responsibility, and that while there is always inter-agency coordination, transition issues will arise.

Mr. Wolf asked about the Department's efforts to ban smoking in the jails. Commissioner Fraser said that a new proposal had been submitted to the Office of Labor Relations, and it is under review. He said DOC had identified potential staff smoking areas in the facilities, and that another meeting is scheduled for January 18.

A motion to renew existing variances was approved unanimously. The meeting was adjourned at 2 p.m.