

**NEW YORK CITY
BOARD OF CORRECTION**

July 18, 2001

MEMBERS PRESENT

John R. Horan, Acting Chair
Louis A. Cruz
Stanley Kreitman
Father Richard Nahman, O.S.A.

Excused absences were noted for Board Members Canute C. Bernard, M.D., David Lenefsky, Barbara A. Margolis and David A. Schulte.

DEPARTMENT OF CORRECTION

William Fraser, Commissioner
Gary Lanigan, First Deputy Commissioner
Sandra Lewis Smith, Deputy Commissioner
Elizabeth Loconsolo, General Counsel
William Hurley, Chief of Inspectional Services and Compliance Division (ISCD)
Steven Conry, Chief of Management and Planning
Anthony Serra, Chief of Custody Management
Roger Parris, Assistant Commissioner
Elizabeth Myers, ISCD
Deputy Warden Richard Filipazzo

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Executive Director
Patrick Brown, M.D., Medical Director
Arthur Lynch, Mental Health Director
Michael Tannenbaum, Chief Operating Officer
George Axelrod, Chief Risk/Quality Officer
John W. Russell, Assistant Chief Operating Officer
Robert Berger, Director, Service Delivery Assessment
Deb Hall

OTHERS IN ATTENDANCE

R. Attolini, St. Barnabas Hospital
Grace Bonilla, Legal Aid Society
Katherine Finkelstein, *New York Times*
Andrew Krause, Mayor's Office
Gerald McKelvey, Rubenstein Associates
Sam Nitze, freelance journalist
Trevor Parks, M.D., Medical Director, Prison Health Services
David Rohde, *New York Times*
Dale Wilker, Prisoners' Rights Project, Legal Aid Society

Acting Chair John Horan called the meeting to order at 1:02 p.m. Minutes from the June 14, 2001 meeting were approved unanimously.

Acting Chair Horan called for reports from the Members. Board Member Louis A. Cruz reported that defense attorneys, parole officers and private investigators told him that difficulties in obtaining prompt access to inmates in City had been resolved, and he commended Commissioner Fraser. Board Member Stanley Kreitman added that the mother of an inmate called him and reported that visitation procedures had improved.

Acting Chair Horan raised the issue of additional dormitory beds at the Anna M. Kross Center (AMKC). Board Executive Director Richard Wolf reported that DOC has begun to fill 600 dormitory beds in three buildings, Dorms 17, 18 and 19, that had been part of the West Facility command. He said that many other dormitories had been taken "off line" to be repaired or closed, and that Dorms 17-19 were in very good condition. Mr. Wolf said that the Board wished to discuss how long it would take for probe and response teams to come to the areas in the event of an alarm, given their distance from the administrative corridor of AMKC. Citing security concerns, Commissioner Fraser asked that the discussion occur in executive session, and Acting Chair Horan agreed. Mr. Wolf noted that 300 of the 600 beds were filled, and asked about plans for providing medical care to the inmates in the recently-opened dormitories. He said that the operating plan called for triaging by a physician's assistant, but that this was changed. He added that during an inspection last week, BOC staff saw construction to bring running water to front rooms of the dormitory buildings for treatment areas. Mr. Wolf said that BOC staff had received conflicting information from DOC and provider staff regarding sick call. DOC staff had reported that sick call would occur in each of the three buildings; Prison Health Services (PHS) staff said that sick call would be provided in a mini-clinic in Mod 7. Commissioner Fraser said that sick call would occur in Mod 7, and that the treatment areas would be for emergencies only. He added that response to medical emergencies would come both from AMKC and the West Facility, which is actually closer. Mr. Wolf asked if the dormitory inmates would follow the same sign-up procedures as other AMKC inmates, and Commissioner Fraser said that they would. He added that problems during the first few days had been rectified. Noting that the total population of AMKC had not yet increased, Mr. Wolf asked how many inmates DOC expected to house at AMKC. Commissioner Fraser said that the dormitories were replacement beds, and added that he expected AMKC's census to remain at approximately 2,000. Correctional Health Services (CHS) Executive Director Ernesto Marrero said that he did not anticipate a need to increase AMKC's provider staffing. Mr. Wolf asked if increased utilization of Mod 7 would require a redistribution of staff. Mr. Marrero said that thus far this was not necessary, but if the situation changed he would do so.

Acting Chair Horan raised the issue of construction of a new Central Punitive Segregation Unit (CPSU). He said that shortly after the June Board meeting, Board representatives met with Commissioner Fraser, Deputy Commissioner Figueroa and other DOC staff to discuss the design of planned recreation areas. Mr. Horan said that some of the information requested at that meeting was provided to the Board by DOC. He estimated that "we are halfway through our discussion" and asked the remaining information, which he described as itemizing in detail how the proposed design modification would affect sunlight in the recreation areas. Mr. Horan said that after receiving and reviewing the information, the Board will meet

again with the Department and “see where we come out”. He said that the Board could not comment further on the design at this time. Commissioner Fraser said that the information should be ready in approximately one month.

BOC Deputy Executive Director Cathy Potler reported that the second suicide of 2001 occurred on July 1st at AMKC. She said that a 24 year-old male inmate was found with a sheet tied around his neck and attached to the vent over the toilet in his general population cell. She said that the initial DOC report indicated that the inmate’s hands and feet were tied. Ms. Potler noted that the inmate was discovered at 4:40 a.m., as breakfast was about to be served. She said that medical staff reported that the inmate’s extremities were rigid, and that he was pronounced dead in his cell. Ms. Potler said that nine days before the suicide, the inmate had cut his left wrist and had received twelve sutures, but had been returned to general population. Commissioner Fraser confirmed Ms. Potler’s account. He added that the NYPD and the Medical Examiner concluded that the death was self-inflicted, despite the fact that hands and feet were tied. The Commissioner said that the Medical Examiner reported that the extreme heat made it impossible to determine with certainty the time of death, noting that extreme heat can accelerate the onset of rigidity. He added that the issue of when the patrolling officer last made a tour remains under investigation. Mr. Marrero said that a CHS mortality and morbidity review of the death resulted in a review of protocols, and that some changes were implemented. He added that “a couple of personnel actions have been taken”. Ms. Potler asked Mr. Marrero to discuss corrective actions that were taken with respect to policies and procedures. Mr. Marrero said he would respond in writing. Acting Chair Horan read a statement prepared by Board Member David Lenefsky, as follows:

I would ask Prison Health Services to review its procedures and clinical policies with regard to mental health evaluation of inmates. I do so because it is clear that inmate Raymond Warne should not have been placed in general population after he attempted suicide by slashing his wrist on June 22nd, nine days before he took his life on July 1st. The three deep and nine vertical sutures administered to Mr. Warne should have been, by definition, per se, cause to place him in a mental health setting.

Mr. Cruz asked if CHS could explain the “lapse” of returning the inmate to general population after he attempted suicide. Mr. Marrero said that he did not think he should respond, because a lawyer representing the inmate’s family already has contacted him and litigation is expected. Mr. Marrero added that the mortality and morbidity process involves reviewing all protocols for appropriateness and sufficiency; if they are deemed proper, the process considers whether the protocols were followed.

Noting that a report had been made at the June meeting Ms. Potler discussed the June 12th homicide at AMKC. She said that she had raised with DOC questions regarding the alleged assailant’s housing and job assignment. Ms. Potler noted that this inmate returned to DOC from State custody on June 7th, “owing” 220 days on a punitive segregation sentence from his earlier DOC incarceration, which ended on March 12th. She added that the inmate had an extensive institutional violence history and had been issued a red ID card. Ms. Potler asked why DOC had

not placed the inmate in CPSU, as its directives allow. Commissioner Fraser said that all inmates returning from State custody are processed through AMKC and then housed where appropriate. He said that the inmate was on his way to the clinic for final clearance for return to CPSU when the fight occurred. The Commissioner noted that it had been only a day or a day and one-half between the time the inmate returned to AMKC and his being cleared for return to CPSU. He added that the Chief of Security is reviewing the clearance process to see whether it can be expedited. Ms. Potler asked about the inmate's work assignment at the commissary. Bureau Chief William Hurley said that the inmate did not work in the commissary. Mr. Wolf said that the inmate had been at AMKC for five days. First Deputy Commissioner Gary Lanigan said that the inmate had returned on Thursday, appeared in court on Friday and the homicide occurred on Monday.

Mr. Wolf asked for a report on the Department's experience thus far with the CPSU shower variance. Commissioner Fraser said that sixteen infractions have been written. He said DOC has not yet seen a reduction in uses of force or shower-related incidents, but it was very early and the incidents were minor. He reported that DOC had re-notified CPSU inmates, in writing, about the shower sanctions, and added that announcements were made, in English and in Spanish, over a bullhorn in each housing area. Mr. Wolf noted that the Board and the Department will continue to assess the effects of the variance, and will discuss it again at the Board's September meeting.

A motion to renew existing variances was passed without opposition.

Acting Chair Horan then turned to correctional health matters, noting that the Board had received a memorandum written by Mr. Marrero reporting that PHS had failed to meet 20 of 33 performance indicators. Mr. Marrero said that transitions are difficult, that the previous vendor had troubles often blamed on the prior vendor, and that the current vendor had troubles often blamed on the previous vendor. He reminded everyone that the system employs approximately 1,000 full-time-equivalent positions 24 hours per day, seven days per week. Mr. Marrero said he is "hopeful" because clinical performance continued to improve "from day one". He said that the quarterly report does not truly reflect performance at the end of the quarter, and that problems in the first two or three weeks are enough to affect results for the entire quarter. He noted that CHS has completed its review of nine performance indicators for the second quarter, and found that all are higher than the first quarter, sometimes dramatically so. Mr. Cruz asked why PHS had several changes in the Medical Director position, and asked whether it had to do with policy differences. Mr. Marrero said that he did not think so, and added that the contract allows HHC to fire anyone employed under the contract and to approve the Medical Director. He said that the Medical Director must be both a good clinician and an excellent administrator, and that the vendor, to its credit, moved people out when it concluded that they "weren't working out". Mr. Marrero said that by elevating the former deputy, Dr. Trevor Parks, PHS improved clinical operations. Mr. Marrero added that CHS's weekly on-site monitoring has contributed to improved performance by PHS.

Mr. Kreitman said that he was concerned because only three of the 40 indicators have been met. He said he did not know what "substantially met" means, and stated that reports during the "Montefiore era" gave a percentage of compliance. Mr. Marrero said that CHS has

used the same format for the two years that he has worked at CHS. He said that "substantial compliance" is assessed by clinicians, by subject area. He gave examples of written reports, for which 98% submitted on time might be substantial compliance, whereas it might not be substantial compliance if 98% of patients receive triple-drug HIV therapy. Mr. Marrero said that CHS also assessed the reasons for failure on a case-by-case basis. He said that if a chart "failed" because of a "documentation" issue rather than a "clinical" issue, CHS might make a determination of substantial compliance. He added that there is no "blanket" percentage rule that, for example, a 5% failure rate is substantial compliance. Mr. Wolf asked how CHS knew what guidelines it was required to meet. Mr. Marrero said that the contract requires 100% compliance in each area, making the CHS contract the "toughest" in the nation. He noted that each of 130,000 admissions per year requires an intake physical examination, and that documentation of each exam involves approximately 45 report entries; if one is missing, the document "fails". Mr. Wolf asked if the contractual requirements for CHS are the same as those for the previous vendor. Mr. Marrero said that the CHS requirements are more stringent. He noted that at least five performance indicators previously had been set at between 75% and 95%, and that more indicators now had time frames that CHS had to meet. Mr. Wolf asked for an example. Mr. Marrero cited HIV counseling, which went from 75% to 100%. Mr. Horan asked whether CHS was contesting liquidated damages. Mr. Marrero said that it was not, adding that the CHS contract allowed PHS to withhold assessed damages from payments to CHS. Mr. Cruz asked whether CHS had sought mediation or arbitration. Mr. Marrero said that it had not, noting that the data upon which liquidated damages are based is shared each week with the vendor. He said that CHS "appreciated" this process because it alerts CHS to problems that have been identified so that it can take prompt corrective action.

Ms. Potler, noting that the CHS contract is a "fee-for-services" contract, asked Mr. Marrero to report on a matter of continuing concern to the Board, access to specialty clinics, both on- and off-Island. She said that performance indicators were not met in the first quarter of 2001. Mr. Marrero said that everyone was aware of the 325 consults that were "misplaced", and that this fact meant that CHS could not meet either indicator. He said that thereafter, the problem was corrected, that access has improved, and that PHS and CHS are working on standardizing the scheduling process across facilities. He added that CHS recently appointed a new director of utilization. Ms. Potler asked whether more inmates are being sent to outside hospitals this year than was the case last year. Mr. Marrero said that more inmates are being scheduled this year. Ms. Potler asked whether more inmates actually get to the hospitals. Mr. Marrero said that the answer varies by month. He noted that on average, 40-45% of inmates scheduled for hospital specialty clinics arrive for their appointments. He said that inmates do not arrive for a variety of reasons, including court appearances and transportation.

Ms. Potler said that two performance indicators were not reviewed, specialty housing and death reviews. Mr. Marrero said that the death reviews indicator was not assessed, because the indicator requires that corrective action plans resulting from the death reviews during the previous quarter must be implemented. He said that CHS worked with DOC and PHS to create a system to ensure that specialty housing area services were provided, and could be monitored. Mr. Marrero said that a system was created too late for review in the first quarter. Mr. Wolf said that he and Ms. Potler requested four medical charts from the RMSC clinic, whose staff were unable to find three until the end of the day. He said that the Performance Indicator Report noted

that "medical chart availability" was "substantially met" in the first quarter. Mr. Wolf asked if his and Ms. Potler's experience was an anomaly, and what "substantially met" means in this context. Mr. Marrero said that he will respond promptly to a letter from Ms. Potler regarding BOC staff's experience at RMSC. He said that PHS has hired additional staff on overtime and created a "SWAT team" to go to each clinic, and find and file all loose documents into the appropriate charts. Mr. Marrero said that AMKC's loose papers have been filed, as have most of RMSC's loose papers. He said that once the backlogs have been cleared, PHS has a plan to ensure that all papers are filed promptly. Mr. Marrero said that PHS had approximately 250,000 medical encounters in the first quarter. He said that the information he received from CHS' monitoring is that most of the time, when an inmate comes to the clinic for follow-up or sick call, the chart is available. Mr. Wolf asked how many encounters CHS monitored and reviewed to arrive at this conclusion. Mr. Marrero said that monitoring is done in two ways, anecdotally and direct examination of charts. He said that of the 17,000 inmates who came into PHS-serviced buildings in the first quarter, approximately 1,600 charts were reviewed, which most statisticians would consider "way beyond a statistically relevant sample". Mr. Wolf said he assumed that the "universe" of samples for important clinical indicators, such as HIV counseling and triple-drug therapy, was 100%. Mr. Marrero agreed, mentioning diabetics and pregnant women as examples.

Mr. Cruz asked about the status of the situation regarding St. Barnabas Hospital's (SBH) claim of a proprietary interest in the computerized medical records system. Mr. Marrero said that the litigation continues. He said SBH had withdrawn its assertion that the RFP process was inappropriate. Mr. Cruz asked who has physical custody of the system. Mr. Marrero said that SBH has custody of the program and that the computers remain on Rikers Island. Mr. Cruz asked if the system could be put back in place if PHS posted a performance bond. Mr. Marrero said that the problem with that suggestion is that it is CHS' information that the software system was abandoned by its creator. He said that CHS continues to seek a new system, and has looked at the HHC system, a system that PHS uses for its Kansas contract, and a third system from a company in Boulder, Colorado. Noting that HHC's procurement procedures are more streamlined than that for Mayoral agencies, Mr. Marrero said that as soon as CHS identifies a software program, development will begin to customize the software to the needs of our system, a process that can proceed "relatively quickly".

Mr. Cruz raised the issue of discharge planning for mentally ill inmates. Mr. Marrero said that the City has been negotiating a resolution to the *Brad H.* lawsuit, and has convened meetings of many City agencies to address issues raised in the lawsuit. He said that as a result, CHS hired 34 new discharge planners. Mr. Marrero said he can assure the Board that every inmate who is receiving mental health services has seen or will see a discharge planner who will make every effort to connect the inmate to resources in the community, and will make every effort to ensure that each discharged inmate receives prescribed psychotropic medications. He said that currently approximately 1,500 inmates are "discharge planned", and, at the time of release, each inmate will be brought to the clinic to receive a discharge plan and medications, when appropriate.

Mr. Kreitman said that he assumes Mr. Marrero is not pleased with PHS' failure to meet most of the Performance Indicators, and that this is evidenced by the fines that have been levied.

Mr. Marrero agreed. Mr. Kreitman said he agrees that changing vendors is very difficult in the City's correctional environment, and asked when Mr. Marrero believes CHS will be in a position to properly evaluate PHS. Mr. Marrero said an overall evaluation can be made now, based upon Performance Indicator information. He said that several factors lead him to conclude that care is improving every day and is better than the care provided last year: staff are working in all mandated posts; a physician is on site 24/7; infirmary posts are mandated; clinical reviews and case conferencing are ongoing; and patient advocates have been hired. Mr. Marrero said that he expects continued improvement, and noted that nine of the indicators reviewed thus far for the second quarter show significant improvement over the first quarter.

Mr. Cruz made a motion, which was approved unanimously, to convene an executive session of the Board to discuss security matters. Acting Chair Horan adjourned the public meeting at 1:52 p.m. The Executive Session concluded at 2:10 p.m.