

**NEW YORK CITY  
BOARD OF CORRECTION**

**May 10, 2001**

MEMBERS PRESENT

Canute C. Bernard, M.D.  
Louis A. Cruz  
David Lenefsky  
Father Richard Nahman, O.S.A.  
David A. Schulte

Excused absences were noted for Acting Chair John R. Horan and Board Members Stanley Kreitman and Barbara A. Margolis.

DEPARTMENT OF CORRECTION

William Fraser, Commissioner  
John Antonelli, Deputy Commissioner for Administration  
Elizabeth Loconsolo, General Counsel  
William Hurley, Chief of Inspectional Services and Compliance Division (ISCD)  
Steven Conry, Deputy Chief  
Roger Parris, Assistant Commissioner  
Elizabeth Myers, ISCD  
Deputy Warden Richard Filipazzo  
Captain Darryl Harrison

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Michael Tannenbaum, Chief Operating Officer  
Patrick Brown, M.D., Medical Director  
Arthur Lynch, Mental Health Director  
George Axelrod, Chief Risk/Quality Officer  
Sheila Finkelstein, Director, Women's Health  
John W. Russell, Assistant Chief Operating Officer  
Robert Berger, Director, Service Delivery Assessment

OTHERS IN ATTENDANCE

Don Doherty, Vice-President, PHS  
Latonia McKinney, Finance Division, City Council  
Milton Zelermyer, Prisoners' Rights Project, Legal Aid Society

Board Member David Schulte opened the meeting at 1 p.m., announcing that Acting Chair John Horan had asked Mr. Schulte to preside in Mr. Horan's absence. Mr. Schulte praised Commissioner William Fraser's leadership of the Department of Correction. He then complimented Board Member David Lenefsky, who presented an art history walking tour-lecture at the Metropolitan Museum of Art that was attended by members of the Department and Board staff. A motion to adopt the minutes from the May Board meeting passed unanimously.

Mr. Schulte called for Members' reports. Mr. Lenefsky said that since the beginning of the year, there had been two homicides at the Mental Health Center at the Anna M. Kross Center (AMKC). He added that there had been another serious incident since the last Board meeting. Mr. Lenefsky asked whether the Department had met with Correctional Health Services (CHS) regarding the Mental Health Center. Commissioner Fraser said that he had not met with CHS concerning the homicides, which are under investigation. He said that in one incident, several inmates had a fight, one returned to his cell, passed out, and died of a fractured skull. The Commissioner said that perpetrators have been identified and that legal action will be taken. He noted that a grand jury is looking at the actions of DOC staff. Mr. Lenefsky asked whether something is going on at the Mental Health Center that needs to be re-evaluated, or are the three incidents a statistical anomaly. Commissioner Fraser said he was looking at expanding the Mental Health Punitive Segregation area from 16 to 32 cells, because there are 29 inmates who should be in punitive segregation whose mental health status precludes such housing. He said completion has been delayed by difficulties with methane vents and construction of recreation pens. He said he expected the renovations to be completed by July 1. Mr. Lenefsky asked if the issue of mental health services at AMKC could be revisited, and suggested a meeting with DOC, CHS and BOC members and staff. Commissioner Fraser said he would meet with CHS, and added that he had not seen an increase in overall violence in the Mental Health Center.

Mr. Lenefsky reported that together with BOC Executive Director Richard Wolf and Deputy Executive Director Cathy Potler, he recently met with CHS Executive Director Ernesto Marrero. Mr. Lenefsky said that he reviewed with Mr. Marrero CHS's efforts to hire a medical director, and also discussed inmate access to specialty clinics following situations in which hundreds of consults had not been processed. Mr. Lenefsky reported that Mr. Marrero said that follow-up letters were being sent to 45 inmates who no longer were in the system but required additional care. Mr. Lenefsky noted that Mr. Marrero said that the first performance evaluations for PHS will be completed soon and shared with the Board, and that Mr. Marrero discussed telecommunications systems by which inmates on Rikers Island could be "seen" by off-Island providers. Finally, Mr. Lenefsky reported that Mr. Marrero was confident that PHS was fully cooperative and eager to effectively provide services under the contract, and that CHS had adequate monitoring capabilities to ensure positive results.

Mr. Schulte reported that he recently toured the existing Central Punitive Segregation Unit (CPSU), and learned that when the new CPSU is constructed, 100 cells will be recovered from the existing facility - 50 from the law library and 50 from the receiving room. Commissioner Fraser said that it was important for the Department to improve the ratio of cell to

dormitory beds in the system. He noted that before the rapid expansion in the 1980's, 65% of the system's beds were single cells and 35% were dormitories. The Commissioner added that the system requires many more cells to accommodate separations and special populations, and that the proliferation of gangs has compounded the need for cells, as gang leaders must be separated from one another. He said that the ratio of cell to dorm beds envisioned by the Department's ten year capital construction plan will promote safety and security. Commissioner Fraser said that the current ratio is 55% dormitory beds and 45% cell beds. Mr. Schulte said that he believes the Department must construct more cells as replacements for modular dormitories and Sprungs. Commissioner Fraser noted that the first project is to construct a new 448-bed Central Punitive Segregation Unit (CPSU) to replace the existing areas at the Otis Bantum Correctional Center (OBCC), which were retro-fitted to become CPSU under "emergency conditions" due to a court order requiring the Department to move the CPSU away from the James A. Thomas Center (JATC). The Commissioner said that the new building will be modern and safer, because there will be less interaction between inmates and staff. He added that when the new CPSU opens, the Department will gain an additional 100 general population cells at OBCC.

Board Member Louis A. Cruz said that he had received reports that legal support staff, including paralegals and private investigators, were not being granted access to inmates in DOC facilities in timely fashion. Commissioner Fraser said that DOC's procedures require that clients be seen within 45 minutes. He said that the number 3 and 4 lines at the visitor reception center on Rikers Island now are for lawyers and their representatives to expedite the process, and that signs to this effect have been posted. He added that attorneys now are able to make scheduled appointments to visit clients, and that some have written to praise the new procedures. Mr. Cruz said that he recently was told that during shift changes, metal detectors at front gates are disregarded. He distinguished DOC's front gate practices from those of local Federal detention centers, at which staff are required to leave all packages, including lunch, at secure areas. Mr. Cruz said that he brought this issue to a prior commissioner a year or two ago, and that he thought the problem had been rectified. Commissioner Fraser said that everyone passes through the magnetometer at the front gate, and all packages go through the fluoroscope. He said that he was not disagreeing with Mr. Cruz, but he said that the rule is clear: everyone must follow proper security. He added that representatives from the Chief of Security's office conduct inspections of shift-change front-gate procedures. Finally, Commissioner Fraser said that a captain is assigned to supervise the front gate during change of tour. He said that he will direct his staff to pay renewed attention to the issue. Mr. Cruz said that, at a recent visit to Rikers Island, signs indicated that two lines were available for lawyers and their representatives, but only one was in use because the second was not staffed, even though there were sufficient staff in the area.

Board Member Dr. Canute C. Bernard raised the issue of smoking in the jails, and asked about the status of negotiations with the unions. Commissioner Fraser said that the Department was unable to arrange a meeting with the unions. Mr. Lenefsky asked how many inmates and how many staff are smokers. Commissioner Fraser said he would provide the Board with the number of cigarettes sold in the commissaries each month. He said that it was his sense that fewer officers and fewer inmates smoke today than did years ago. Dr. Bernard said that the issue



is not whether smoking causes cancer - this is an established scientific fact. He said that the discussions seem to be directed towards delaying, rather than focusing on the "bottom line". Commissioner Fraser said that DOC's campaign to voluntarily reduce smoking includes posters, inmate council discussions, focus groups sponsored by the American Cancer Society, and revisions in the inmate orientation video. He said that a complete ban is not imminent, and that the Department has "worries about what will happen with the inmate population" if a ban is imposed. The Commissioner said that some inmates are very violent and rely upon smoking for "comfort". He said that DOC is studying the experiences of other jurisdictions. Dr. Bernard said he was concerned about having inmates with chronic diseases confined in close quarters with inmates who smoke. The Commissioner said that smoking was prohibited in the Contagious Disease Units (CDUs) and infirmaries and clinics. Mr. Wolf noted that these prohibitions were implemented at Dr. Bernard's suggestion. Mr. Schulte suggested that the Commissioner arrange for Dr. Bernard to present his views at the next negotiating meeting with the unions. Mr. Wolf asked if the City's legal position remained that eventually, the law requires that smoking be prohibited in the jails. DOC General Counsel Elizabeth Loconsolo said that she did not believe that the City had ever issued an opinion to that effect. She said she did recall the position had been espoused by the City Council. Mr. Wolf said that several of Commissioner Fraser's predecessors had said that they were required to ban smoking, subject to negotiations with the unions. Commissioner Fraser said that he did not know whether DOC was bound by the law to prohibit smoking in the jails, and that no opinion had been issued by the Mayor's Office.

Mr. Wolf said that the Department had requested a new variance. Mr. Wolf reported as follows:

DOC sought authority to restrict showers for certain CPSU inmates, and submitted a revised request for limiting showers for some CPSU inmates at OBCC. Instead of seeking to restrict showers available to all CPSU inmates, the new request seeks a variance from the Personal Hygiene section of the Standards to allow DOC to limit the number of showers of those CPSU inmates who are found guilty after a hearing of misbehavior occurring during the shower process - on the way to, at, or on the way back from showers. A separate variance is requested for shaving as well, because CPSU inmates are permitted to shave only in the shower area, for security reasons. Board staff suggested a three-month pilot project; the Commissioner requested a six-month variance, and BOC staff has no objection to a six month pilot. If the Board grants the variance, DOC wishes to implement it on July 1<sup>st</sup>, as follows: a first infraction conviction would result in the inmate being offered the opportunity to shower five times per week for two weeks, instead of the daily shower required by the Standards. A second conviction during the same CPSU incarceration would result in the inmate being offered the opportunity to shower three times per week for three weeks. A third conviction during the same CPSU incarceration would result in the inmate being offered the opportunity to shower three times per week for four weeks. A fourth or subsequent conviction during the same CPSU incarceration would result in the

inmate being offered the opportunity to shower three times per week for the duration of the current CPSU incarceration, regardless of its length.

The Department will provide to the Board documentation of all shower restrictions imposed pursuant to the variance within 24 hours of the decision, and will make available for our review videotapes of the incidents giving rise to the restriction. The reason for this is that when Board staff reviewed videotapes of incidents from 1999 and 2000, they observed incidents (often recorded by wall-mounted cameras with no audio) in which no obvious misconduct was visible. Reports disclosed that the inmate was "squirming" because the handcuffs were allegedly applied too tightly, and escort staff pulled on the inmate's arm to control him.

Mr. Wolf urged the Department to use discretion in dealing with the latter situations. Commissioner Fraser said that the Adjudication Captain who hears the infractions is not assigned to the facility, and will be so instructed. He said that the Department is seeking to avoid violence, and does not wish to restrict "someone who is squirming or feels that the cuffs are too tight." Commissioner Fraser distinguished these cases from those in which inmates run away from escorts or assault staff. He added that he will speak to the Adjudication Captains to ensure that they use discretion appropriately. Commissioner Fraser said that if an inmate has a documented medical condition that necessitates frequent showers, restrictions will not be imposed. He added that inmates who are going to court will be afforded showers. Mr. Wolf said that the shower restrictions that are imposed are for the current incarceration at OBCC only. He said that if an inmate finishes his CPSU incarceration and is transferred to another facility, "the clock starts again and the inmate begins with a clean slate" if the inmate returns to CPSU with a new infraction conviction. He added that the restrictions do not follow the CPSU inmate to other facilities. Finally, Mr. Wolf said that DOC and BOC staff agreed that Board staff would have an opportunity to comment upon protocols for medical and court exceptions to the shower restrictions. He then stated that it was Board staff's recommendation that the Members approve the Department's request for a six-month variance. Mr. Lenefsky said that the process of considering the variance was a "good exchange" between the staffs of the Department and the Board. Commissioner Fraser agreed, noting that the "interaction" resulting in "a sound policy" was "extraordinary". A motion to approve the variance was approved by all Members present, save Father Richard Nahman, who abstained. Mr. Wolf reported that Acting Chair John Horan had requested that his vote in favor of the variance be recorded in his absence.

CHS's Chief Operating Officer Michael Tannenbaum introduced Sheila Finklestein, a physician's assistant who is CHS's new coordinator of women's health. He also introduced Donald Doherty, a regional vice-president for PHS who will assume primary administrative responsibility for the contract. Mr. Tannenbaum said that Mr. Doherty has more than thirty years' experience in New Jersey's correctional system.

Mr. Wolf said that the City has begun implementation of the "*Brad H* initiative". He

asked for a report. DOC Assistant Commissioner Roger Parris reported that PHS providers identify Brad H class members who are then entered into the Inmate Identification System (IIS). Mr. Wolf asked Mr. Parris to explain to the Members which inmates are "eligible". Mr. Parris said he was referring to inmates who were receiving mental health treatment. Ms. Potler added that the group included inmates on psychotropic medications. CHS Mental Health Director Arthur Lynch said that the determination of the class has not been fully established. Mr. Parris said that the identified inmates are escorted to the mental health area to have discharge plans prepared. Dr. Lynch said that he would describe current discharge planning, rather than *Brad H* procedures. He noted that these may or may not change for *Brad H*. He said that currently, anyone who comes to mental health is identified to DOC as a potential discharge planning candidate. He said that inmates are identified by pharmacists and by psychiatrists, and a list is compiled by the chief physicians and provided to DOC as candidates for discharge planning. Dr. Lynch said that there are 39 new discharge planning personnel - for a total of 51 discharge planners - to facilitate interviews of identified candidates, and that interviews often occur on the same day that the inmate is identified. He said that each inmate will be screened for entitlements, which are lost when an inmate enters the system. Dr. Lynch said that this "pre-screening to HRA [Human Resources Administration] puts those individuals as identified 'on hold'". He said that in this way benefits are not eliminated; they are suspended. He added that for inmates who were not receiving benefits when they entered jail, applications will be filled out, for Medicaid, Cash Assistance, and housing. He said that the discharge planner works with the mental health team so that when the inmate is discharged from the system, he/she will have an aftercare letter to the providers in the community. Dr. Lynch said that, depending upon the length of City incarceration, an inmate may be visited in jail by the community provider "to make a connection". He said that upon discharge, inmates on medication will be given a five-day supply, and a prescription for seven days with three refills. He added that those individuals who qualify for the medication grant program will be assured the refill of those prescriptions because the City has the money to support their renewals. He noted that the entire program is being monitored by the Department of Mental Health.

The meeting was adjourned at 1:45 p.m.