

NEW YORK CITY
BOARD OF CORRECTION

February 21, 2002

MEMBERS PRESENT

✓ Stanley Kreitman, Chair
John R. Horan, Vice Chair ?
John H. Banks III
~~Louis A. Cruz~~
Father Richard Nahman, O.S.A.
Fredrick J. Patrick

Excused absences were noted for Members [✓]Jane Paley Price and ~~Michael J. Regan~~.

DEPARTMENT OF CORRECTION

William Fraser, Commissioner
Thomas Antenen, Deputy Commissioner
John Antonelli, Deputy Commissioner
Antonio Figueroa, Deputy Commissioner
Steven Conry, Chief of Management and Planning
Jorge Ocasio, Chief of Inspectional Services and Compliance Division (ISCD)
Anthony Serra, Chief of Custody Management
Darryl Harrison, Chief of Staff
Linda LaGreca, Office of the General Counsel
Elizabeth Myers, ISCD

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

✓ Ernesto Marrero, Executive Director
Michael Tannenbaum, Chief Operating Officer
✓ George Axelrod, Chief Risk/Quality Officer
✓ Patrick Brown, M.D., Medical Director
✓ Arthur Lynch, Mental Health Director
Robert Berger, Director, Service Delivery Assessment Unit

OTHERS IN ATTENDANCE

Natalie Bimel, graduate student
John Doyle, Supervisor, Office of Compliance Consultants (OCC)
John Horowitz, Deputy Supervisor, OCC
Philip Messing, *New York Post*
Trevor Parks, M.D., Medical Director, Prison Health Services
✓ Becky Pinney, Project Manager, Prison Health Services
✓ Andy Grossman, Finance Division, City Council
Andrew Krause, Mayor's Office
Michael Skrak, Office of the Comptroller
Dale Wilker, Legal Aid Society, Prisoners' Rights Project

Chair Stanley Kreitman called the meeting to order at 1 p.m. The Members approved minutes of the Board's January 10, 2002 meeting.

Chair Kreitman began his report by asking DOC Commissioner William Fraser to comment on three issues: announced budget cuts for DOC, with specific reference to possible impact on jail operations and whether the Board could be helpful; Judge Baer's decision in *Benjamin v. Fraser*; and use of force and violence statistics, including a comparison of current statistics to last year.

Regarding the budget, Commissioner Fraser said that the Preliminary Budget is being negotiated with the City Council, so it would be inappropriate for him to comment extensively. He reported that DOC met a 12% expense budget reduction, exceeding its 10% target. The Commissioner said that DOC is targeted to cut 29.7% from its capital budget. He said he believes that if adopted, these cuts should not affect services to the inmate population.

As to Judge Baer's decision, the Commissioner reported the following:

Pursuant to the Prison Litigation Reform Act, the City sought to have the *Benjamin* orders vacated, and 70% of the provisions were vacated. The remaining 30% primarily involved environmental issues, and that the Judge asked for a plan to address them. The City sought a stay, which was denied by Judge Baer. The City is now appealing the denial to the Second Circuit Court of Appeals. The City also will appeal the Judge's decision regarding the remaining consent decree provisions, because DOC believes it is in compliance. Judge Baer ruled that beds in dormitories must be six feet apart, but the *Minimum Standards* require that each bed have 60 square feet, a requirement that DOC is meeting and has met for years. This is supposed to be a "constitutional violation", but the constitution contains no requirement that beds must be six feet apart. This requirement does not apply to dormitories in expensive private schools or to military barracks or to families with several children sharing a room. If DOC must meet this requirement, it will lose beds. Another requirement involves lighting. The Judge imposed a "new" standard of 20 foot candles. DOC has provided 10 foot candles for years. If it must replace them, DOC will be required to change 20,000 lights.

The Commissioner added that shower replacement projects are underway in dormitories, and DOC does not believe that conditions in the dormitories are unconstitutional. He added that new tiles are installed in shower areas, and then are dislodged by "power-washing", which is another Court requirement. The Commissioner emphasized that if the City loses the case, the loss of capacity will have a "dramatic impact" on DOC. Vice Chair John Horan asked if the possible loss of capacity was the only thing the Commissioner was concerned about. The Commissioner said this was a big concern. Mr. Horan asked how much capacity would be lost. The Commissioner said DOC could lose almost 1,000 beds. Mr. Horan asked if Corporation Counsel was advising DOC. Commissioner Fraser said that the matter was being handled by both Corporation Counsel and DOC's Legal Division. Mr. Horan said that one thing DOC could do would be to comply with Judge Baer's ruling. The Commissioner responded that DOC would comply if "we thought we were wrong". He added that DOC nonetheless has developed an implementation plan. Mr. Horan asked if DOC had determined how much it would cost to

comply with Judge Baer's order. Commissioner Fraser said he did not have a figure with him, but that costs would exceed \$10 million. Board Member Fredrick J. Patrick said that in light of the pending litigation, the discussion should perhaps move to another topic. Board Member Louis A. Cruz said that the court proceedings and records are public. He said that many things are required by the Constitution, even if the Constitution does not contain a specific reference to them. Mr. Cruz mentioned the Air Force as an example. He then asked Commissioner Fraser if it was correct that DOC has excess bed space. The Commissioner said that it depends on how one defines "excess", and acknowledged that the inmate population is lower than it was last year. He noted that more than 5,000 beds are "under construction", mostly due to court mandates. Mr. Cruz asked if DOC had closed facilities because of lack of need. Commissioner Fraser said that DOC's consolidation of bed space was good management, because it enables DOC to deploy officers to fill budget lines in open facilities and thereby save money, and also allows construction to proceed more rapidly. Mr. Cruz asked whether the issues addressed in Judge Baer's opinion, particularly those pertaining to living conditions of pre-trial detainees, had been agreed to by the parties to the consent decree. He asked why DOC was taking such an adversarial stance regarding positions taken by the Court that appear to be reasonable. Commissioner Fraser said that was Mr. Cruz's opinion, and that the City's appeal make clear that it does not agree that the Court's positions are reasonable. Mr. Cruz asked if the Commissioner knew how much leeway a court gives before it considers sanctions. The Commissioner said that he did not, and was being advised by the Law Department and DOC's Legal Division. Mr. Cruz asked if the Commissioner was concerned that DOC could be sanctioned for contempt of court. Commissioner Fraser said that he is concerned about the case, and reiterated that he is being advised by the Law Department and DOC's Legal Division. Mr. Cruz reminded the Commissioner that it is the Board's "job to evaluate the Department's performance". Chair Kreitman said that the purpose of his question was to elicit information on how the Department is complying with Judge Baer's decision. He said that the Department is taking the case to a higher court, as is the right of any department or individual. Mr. Kreitman added that if it is finally adjudicated that DOC must comply, he is confident that DOC will do so. Mr. Cruz said that he was not being argumentative, but rather attempting to portray a history of why we are where we are now. He said these matters were addressed in a consent decree, not a court-mandated decision. Commissioner Fraser said that the space between beds rule was not part of the original consent decree, nor was the lighting requirement or the frequency of power washing. He added that DOC has put together an implementation plan to present to the Judge. BOC Executive Director Richard Wolf pointed out that the new Members should understand that the *Minimum Standards* require that any multiple occupancy housing area must provide at least 60 square feet of living space per bed, and that this *Standards* requirement has been met and is not at issue in the court proceedings.

Commissioner Fraser addressed Chair Kreitman's third issue, jail violence. The Commissioner said that violence continues to decline, noting that there have been 14 stabbings or slashings during the current fiscal year. He said that projections suggest fewer than 30 incidents for the entire year, a 71% reduction over the previous year. The Commissioner said that "A" uses of force decreased 7% and "B" incidents declined approximately 12%. Board Member John H. Banks III asked for an example of each category. The Commissioner said that the difference is based upon the injury, noting that anything beyond "a simple bruise" is an "A" use of force. He said that multiple lacerations or multiple bruises would be "A" incidents. Mr. Banks asked if uses of force occurred after assaults. Commissioner Fraser said that force could be used in a

variety of circumstances, including when an inmate refuses to follow an order or when two inmates are fighting and force is required to break up the fight. Chair Kreitman asked if there was a particular factor that had led to the continuing decrease in violence, and mentioned the re-sentencing of inmates. Commissioner Fraser said that DOC's policy of arresting inmates for conduct that would result in an arrest "on the street" was very important. He noted that DOC's old practice was to impose administrative sanctions only, such as punitive segregation, and loss of "good time" for sentenced prisoners. The Commissioner said that another important factor was DOC's ability to gather and utilize gang intelligence to reduce violence. He said that better technology, such as electronic immobilization shields - which rarely are used because inmates comply when confronted by the threat of use of the shield - chemical spray and better safety equipment for staff. The Commissioner reported that uses of force now result in fewer and less serious injuries. Mr. Patrick asked about the role of programs in reducing violence. Commissioner Fraser said that DOC understands that reducing inmate idleness results in decreased violence. He mentioned bringing shows into the jails, and tying participation in such programs as family visiting days to a housing area's cleanliness and lack of violence. He added that DOC has basketball and chess tournaments. Commissioner Fraser said that the Board of Education has done a good job recruiting inmates into G.E.D. programs. He mentioned DOC's domestic abuse program, the HIIP and STEP programs ("boot camp"-style programs for men and women, respectively), and the Substance Abuse Intervention Division and Narco Freedom programs. The Commissioner said that Narco Freedom was being expanded to higher classification inmates on a voluntary basis. Mr. Banks asked what impact the budget will have on these programs. The Commissioner said that the currently-planned cuts would not affect inmate programs and services.

Mr. Cruz asked whether the DOC facilities that are to be permanently closed, including the ferries and the Brooklyn Correctional Facility ("Brig"), might be used by the City for some other purpose. Commissioner Fraser said that ownership will be assumed by the City's Department of Citywide Administrative Services, which will decide whether to sell them or use them for another purpose.

Mr. Cruz commended Rikers Island security staff for its actions in denying him access to the Island when he sought entry using the old BOC identification card. He said they acted in a courteous, professional manner and were well-trained. Mr. Cruz added that he faxed a note to the Department, which Commissioner Fraser acknowledged with thanks. Mr. Cruz added that he wished to raise a security matter in executive session.

Mr. Wolf presented the staff report. He began by asking Correctional Health Services ("CHS") Executive Director Ernesto Marrero to report on CHS' evaluation of Prison Health Services' ("PHS") 4th quarter performance of its contract to provide correctional health services. Mr. Wolf asked Mr. Marrero to discuss those performance indicators ("PIs") that PHS never has met, and to comment on remedial measures taken by CHS and PHS. Mr. Marrero reported as follows:

40 PIs were evaluated, a larger number than usual because some PIs are evaluated annually. 31 were "met" or "substantially met", with a combined average of approximately 98%. Of the 9 that were not met, several corrective action plans have been implemented. CHS is confident that these 9 PIs will continue to

improve, as they have done with each successive quarter. The \$41,000 in liquidated damages is the lowest amount ever imposed on any vendor. 5 of the 9 that were "not met" averaged 88%, and CHS expects that these will be "met" in the first quarter of 2002. One of the remaining 4 - the patient problem list - never will be met. After each encounter, this summary list is supposed to be updated. Without an electronic medical records system, which automatically updates the problem list, it is unlikely that this PI will be met. The other three PIs are improving, a fact that will be verified at the end of the next quarterly review. One is "7A", a new PI that covered only five inmate/patients. The remaining two PIs are mental health-related (numbers 18 and 19). The first is documentation of treatment, which must be complete, accurate and timely. Dozens of pages of forms must be completed, with multiple boxes, lines and signatures required, and if one entry is missed, documentation is incomplete. The second mental health PI addresses the frequency that inmate/patients are to be seen. For example, if an inmate is receiving psychotropic drugs, he/she must be seen to be reevaluated every 14 days. If 15 days elapse, the PI has not been met.

Mr. Banks asked Mr. Marrero to identify and discuss the remaining PIs. Mr. Marrero said these include: number 24, radiology; laboratory (25); specialty clinics (22 and 23).

Mr. Horan asked about the PI "Intake History". Mr. Marrero said that performance was "substantially met" in the 3rd quarter "final analysis", because its passing rate was approximately 94%. He said that the PI requires that a physical examination be completed, and within four hours. Mr. Marrero said that "final analysis" meant that if there were no 24-hour intake violations, the four-hour completion requirement is, in effect, waived. In the fourth quarter, however, the four-hour completion rate declined to 93%. Mr. Marrero said that most of the failures occurred because an exam was incomplete - someone might be asked if they smoked, but not "how many packs?" - rather than because the exam was not done. Mr. Wolf asked Mr. Marrero to explain what the radiology and laboratory PIs require, and how PHS fell short. Mr. Marrero said that the laboratory PI requires that certain abnormal lab results must be reviewed and charted within 48 hours. Mr. Wolf asked for clarification. Mr. Marrero said that when the results comes back from the laboratory, the report must be reviewed by a physician at the jail clinic and noted in the chart, to assure that the lab report was reviewed with reference to the "overall condition" of the inmate as reflected in the chart. He said that CHS was finding that some *de minimus* abnormalities were being ignored as inconsequential. He added that a corrective action plan caused this PI to improve from 80% (3rd quarter) to over 90% (4th quarter). Mr. Wolf asked whether CHS' review had identified any situations in which the reviewers disagreed with the clinician's assessment that the abnormality was *de minimus*? Mr. Marrero said that CHS' Medical Director reviewed approximately 50 charts and found no discrepancy. Mr. Wolf then asked about the PI for x-rays. Mr. Marrero said the requirement was that abnormal results must be reviewed and charted within 24 hours, and that this had improved to 88% in the 4th quarter. He added that preliminary reports suggest that performance will exceed 90% in 1st quarter of 2002.

Mr. Cruz said that he is particularly concerned about infection control, as it relates to staff and inmates. Mr. Marrero said that 100% is the target and that for intake exams, for example, 13,000 to 15,000 new admission exams are conducted each quarter. Robert Berger, Director of

CHS' Service Delivery Assessment Unit, said that compliance with the PI requiring assessing for sexually transmitted diseases involved checking on all new admissions, and that the PI was met in 99% of the cases. Mr. Wolf then asked CHS to explain tuberculosis intake procedures to the new BOC Members. CHS Medical Director Dr. Patrick Brown said that a PPD test is implanted and that the result is to be read within 72 hours, and documented in the chart. Mr. Marrero said that whenever CHS finds a chart that is not in compliance, the health services administrator in the facility is told in writing of the failure, and he/she must respond in writing within 5 business days that the failure has been corrected.

Mr. Patrick asked about the connection between "compliance" and "met" on the PI summary report. Mr. Marrero said that "compliance" is the target. He added that whether a PI has been "substantially met" is a subjective decision, and determinations are based upon both the number and the severity of the failures.

Mr. Cruz asked whether the medical doctors have sufficient administrative staff to file all of the paperwork that must find its way into the charts. Mr. Marrero said that this had been a problem several months ago, so CHS authorized PHS to hire additional staff to reduce the backlog, which was eliminated and has not recurred.

Mr. Wolf then raised the issue of hospital runs. He said that when the contract model was changed from managed care to its present form, there was speculation about what effect the change would have on the frequency of hospital runs. Mr. Wolf asked Mr. Marrero to compare the last year of the St. Barnabas contract to the first year of the PHS contract, and, if there is a difference, to discuss what accounts for the difference. Mr. Marrero said that there is a difference: there are more runs per month under the new contract. He said that there had been statements, which he was not characterizing, that the previous contract's capitated model created financial incentives for the vendor to not send people to the hospital who needed hospital care. He said that under the previous vendor, it was true that Urgi Care was used as a "gate keeper" - no physician at a jail clinic could send an inmate to a hospital without checking first with Urgi Care. Mr. Marrero said that he and others at CHS wanted to be sure that needed hospital care would be available to any inmate/patient who required it. He said that each physician has been told explicitly that he or she is empowered to send someone to a hospital. Nonetheless, Mr. Marrero reported, the use of Urgi Care has doubled under PHS. He said that hospital runs are reviewed in several ways for appropriateness. He reported that each month, Mr. Marrero, the CHS and PHS Medical Director and Mental Health Directors review all hospital runs that did not result in admissions. Mr. Marrero noted that any run resulting in an admission is presumed to be a proper run, but that the converse may not be true. He said that only approximately 3% of the hospital runs that were reviewed were unnecessary. Chair Kreitman asked how much the hospital runs had increased. Mr. Marrero said that the answer is complicated because the definition of a hospital run has changed. For example, when an inmate moved from Elmhurst Hospital to Bellevue, this was considered a hospital run. He said that DOC's numbers reveal that in 2000, there was an average of 140 medical hospital runs per month, as compared with 150 medical hospital runs per month in 2001. He added that these numbers did not include runs from the borough facilities, except for the Manhattan Detention Complex.

Commissioner Fraser said that the new President of HHC, Dr. Benjamin Chu, has shown a keen interest in correctional health issues, and has established a committee to study the issues.

Commissioner Fraser and Mr. Marrero agreed that definitions need to be agreed upon.

Board Member Father Richard Nahman asked whether the Department was continuing to assist in the post-September 11th activities that Commissioner Fraser outlined at the January BOC meeting. Commissioner Fraser said that DOC's involvement ended approximately two weeks ago. Father Nahman said he was very impressed by the involvement of DOC's uniformed personnel.

Chief of Inspectional Services Jorge Ocasio's request for a renewal of existing variances was approved by all Members present. Mr. Cruz asked about the status of DOC's request for a variance to require inmates traveling to non-emergency hospital clinic appointments to wear orange jump suits. Mr. Wolf said that in the next week or two, Chief Ocasio will be providing protocols, procedures and other documents that the Board's staff will review expeditiously, after which the Board will be prepared to consider DOC's request.

Chair Kreitman adjourned the public meeting at 1:50 p.m.. Thereafter, at the request of Mr. Cruz, the Board convened in executive session to discuss security matters. The executive session concluded at 2:05 p.m.