

**NEW YORK CITY
BOARD OF CORRECTION**

May 14, 2002

MEMBERS PRESENT

Stanley Kreitman, Chair
John H. Banks III
Richard M. Nahman, O.S.A.
Jane Paley Price
Fredrick J. Patrick
Michael J. Regan

Excused absences were noted for Vice Chair John R. Horan and Member Louis A. Cruz.

DEPARTMENT OF CORRECTION

William J. Fraser, Commissioner
Gary Lanigan, First Deputy Commissioner
Thomas Antenen, Deputy Commissioner
Leroy Grant, Chief of Inspectional Services and Compliance Division (ISCD)
Anthony Serra, Chief of Custody Management
Elizabeth Loconsolo, General Counsel
Michelle Bacon, Assistant Commissioner
Elizabeth Myers, ISCD

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Jr., Executive Director
George Axelrod, Chief Risk/Quality Officer
Patrick Brown, M.D., Medical Director
Arthur Lynch, Mental Health Director
Robert Berding, Deputy Chief Operating Officer

OTHERS IN ATTENDANCE

Amy Anderson, NYU
Don Doherty, Vice President, Prison Health Services
John Horowitz, Office of Compliance Consultants
Louis Jacobs, Office of Management and Budget
Jacqueline Riley, Finance Division, City Council

Chair Stanley Kreitman called the meeting to order at 1 p.m. On behalf of the Board and the Department, he extended condolences to Board Member Louis Cruz on the passing of his father. The minutes of the Board's April 11, 2002 meeting were approved without objection.

Chair Kreitman asked DOC Commissioner William Fraser to comment on two recent court rulings. Commissioner Fraser said that DOC General Counsel Elizabeth Loconsolo would discuss the rulings in the *Sheppard* and *Benjamin* cases.

Ms. Loconsolo said that on May 7, 2002, the final report of the Court's joint consultants was reviewed. She noted that the consultants expressed the opinion that their oversight no longer was needed. She said that, citing the Prison Litigation Reform Act, the City renewed its motion to terminate the Settlement Agreement. Ms. Loconsolo said that *Sheppard* was a class-action lawsuit that alleged a pattern of excessive and unnecessary force by staff against inmates housed in the Central Punitive Segregation Unit (CPSU) on Rikers Island. She added that the *Sheppard* complaint also alleged that investigations of use-of-force incidents were inadequate and actually "cover-ups". Ms. Loconsolo said that Judge Robert Patterson agreed to terminate the Settlement Agreement, and said he soon would issue a written decision. Commissioner Fraser said that, after receiving the Judge's decision, he will make a statement at the following BOC meeting acknowledging the contributions of the Board of Correction, the Office of Compliance Consultants, and the Judge, that aided the Department in bringing about an end to the *Sheppard* case.

Regarding *Benjamin v. Fraser*, Ms. Loconsolo reported as follows: DOC had applied for a stay of three provisions of Judge Harold Baer's environmental health order. These are: the "six-foot separation" rule for beds in dormitory housing areas; scheduling for shower renovations; and scheduling of enhanced lighting in housing areas. On April 23rd, the Second Circuit Court of Appeals issued an oral Order granting the City's application for a stay. The City is perfecting its appeal, which should be argued within the next few weeks.

Chair Kreitman asked Commissioner Fraser to update the Board on two deaths that occurred on Rikers Island since the Board's April meeting.

The Commissioner first reported on the death of 48 year-old Michael Williams, as follows:

Admitted to DOC custody on April 29th, Williams began his fifteen day sentence in the Eric M. Taylor Center (C-76) for criminal possession of a controlled substance and criminal trespass at 11:30 p.m. The next day, at approximately 1 p.m., Williams was escorted to housing area 1 Upper. During processing into the housing area, Williams became ill, vomiting profusely. He was taken to the Intake Area and thereafter to the clinic, arriving there at 1:40 p.m. At 3:50 p.m., the C-76 control room was notified to arrange for Williams to be transported to the on-Island Urgi-Care Center at the West Facility. At this point, Williams had a preliminary diagnosis of vomiting and dehydration due to drug withdrawal.

Transportation arrived at C-76 at 4:30 p.m., departed at 4:35, stopped at the Anna M. Kross Center to pick up another inmate, and arrived at Urgi Care at 4:55 p.m. At 5:50 p.m., an IV was started. At 6:13 p.m., an officer observed that Williams appeared to be having a seizure. The officer summoned Urgi Care doctors who provided medical attention. EMS was notified at 8:15 p.m. Upon arrival at Urgi Care, EMS personnel took over CPR. Urgi Care physician Dr. Flores pronounced Williams dead at the Urgi Care Center.

Commissioner Fraser said that DOC was reviewing its transportation procedures. He said that current policy requires that inmates be transported, in a Transportation Division vehicle, from a facility to Urgi Care within one hour. He said that the Transportation vehicle has "other responsibilities", so DOC is considering changing its policy to require the sending facility to have "primary responsibility" for transporting inmates to Urgi Care. He added that such a procedure will operate only when clinicians determine that the inmate's medical condition will allow transportation on a facility bus, rather than a Transportation Division ambulance. Commissioner Fraser said that DOC's preliminary review did not indicate that "any of the time frames had any involvement with the inmate death". Chair Kreitman asked if the preliminary investigation led the Commissioner to conclude that the death was from "natural causes" and had nothing to do with the incarceration. The Commissioner said that this appears to be the case, unless DOC learns that the inmate ingested some drugs without DOC's knowledge - something that would be revealed in a Medical Examiner's report.

Commissioner Fraser next reported on the death of 43 year-old inmate Harry Bergins, as follows: Bergins, charged with theft of service and criminal possession of a controlled substance, was admitted to DOC custody on March 28, 2002 and housed in the Anna M. Kross Center. On May 1st, at approximately 1:40 a.m., an inmate heard a loud noise coming from the bathroom area of housing area West Lower 18B and discovered Bergins on the floor. The inmate notified a housing area officer. Medical staff were summoned from AMKC's main clinic, arriving at 1:46 a.m. A physician responded at 1:48 a.m., and Bergins was pronounced dead. A preliminary assessment by the Medical Examiner's office revealed no evidence of trauma. Information as to whether Bergins might have ingested drugs must await a toxicology report from the Medical Examiner. Thus far, there is no indication of DOC or medical provider staff errors that might have contributed to this death.

Mr. Kreitman next asked Commissioner Fraser to bring the Board up to date on jail violence and the status of the smoking ban. The Commissioner said that uses of force were down. He distinguished between "A" and "B" uses of force by the extent of the injuries, noting that "anything more than a single bruise is really an 'A' use of force." The Commissioner added that a severe laceration or multiple bruises would constitute an "A" use of force. He said there were 130 "A" incidents in fiscal year 1999, 85 in 2000, 57 in 2001, and 51 in the current fiscal year to date. The Commissioner said that there were fewer incidents, and the incidents that occurred resulted in less severe injuries to both inmates and officers than in the past. In fact, he noted that the number of fractures had decreased more than one would expect from the decrease

in the inmate population. Commissioner Fraser added that injury reports were down, as were infractions. Chair Kreitman asked about slashings. Commissioner Fraser said that the Department defines jail violence by the number of stabbing and slashing incidents, which have been decreasing steadily: in 1999, there were 102 incidents; in fiscal year 2000, there were 70; in 2001, 54 incidents; and there have been 21 stabbing and slashing incidents reported this year to date. Commissioner Fraser reported that for the first time, in April, 2002, there were no stabbings or slashings.

Chair Kreitman asked about the inmate population. Commissioner Fraser said it is approximately 14,200, and has been relatively steady for the past year, fluctuating between 13,800 and 14,400. He reported that DOC admits approximately 118,000 inmates per year. The Commissioner said the average daily census remains relatively low because there are more misdemeanor arrests for "quality of life" crimes, with shorter lengths of stay, than there are felony arrests. He noted that the average length of stay is 47 days for detainees (a slight increase), and 43 days for sentenced prisoners. Finally, the Commissioner said that the population is determined by law enforcement initiatives of the Police Department, and on the economy. He said that when the economy is bad, more crimes are committed.

Noting that DOC reports that the population is at 98% of capacity, Mr. Kreitman asked how many cells are not in the Department's listed capacity due to repairs, maintenance or closed facilities. Commissioner Fraser said that approximately 5,000 cells are currently "down". He said that 98% reflects good management, because the Custody Management Division seeks to consolidate bed space whenever possible to use staff to offset overtime.

BOC Member Jane Paley Price said she was curious about gang activity. Commissioner Fraser said that 1,961 inmates had been identified as gang members, predominantly members of the Bloods and Latin Kings. He added that recently the Crips had increased membership somewhat. The Commissioner noted that identifying gang members has become more difficult because DOC has taken away colors, hand signals, and other paraphernalia. He said that as a result of some additional staff training, 50 additional inmates were identified as gang members in the last month. Commissioner Fraser noted that DOC works cooperatively with NYPD, and that much information is shared.

BOC Member Michael J. Regan congratulated the Commissioner on DOC's success in eliminating stabbings and slashings in April. Commissioner Fraser said that reducing incidents helps to reduce costs associated with hospital runs for inmates and sick leave for officers.

Commissioner Fraser reported on an example of how cooperation between DOC and the Board improves the jails. He said that at the George Motchan Detention Center, the cell door release mechanism in a housing area was broken, so that each cell had to be opened manually. *[Note: The facility in question actually was the George R. Vierno Center.]* He said that the Board brought the matter to DOC's attention, noting that in an emergency it might not be possible to evacuate all of the inmates safely. He said that the area was closed and the inmates

have been relocated, thus avoiding a possible disaster. He thanked the Board for the notification. Executive Director Richard Wolf responded that he had intended to present the situation to the Members, and to congratulate DOC on its response.

Chair Kreitman asked for a report on correctional health issues. CHS Executive Director Ernesto Marrero said that CHS' analysis of Performance Indicators (PIs) for Prison Health Services (PHS) should be completed in a few days, but that preliminary review demonstrates improvement over last quarter. Chair Kreitman asked about hospital runs from Rikers Island, which he noted are very costly. Mr. Marrero said that whether hospital runs are up or down "depends on what you count". He added that CHS and DOC were working on a mutually acceptable definition. He said that the PHS and CHS Medical Directors review every hospital run that did not result in an admission, and providers are advised about the propriety of runs. Mr. Marrero said that recently he met with thirty staff and providers at a day-long retreat to discuss hospital runs issues. Commissioner Fraser said that he had been concerned about this issue, but is now comfortable with the controls put in place by HHC President Chu and Mr. Marrero.

Regarding the *Brad H.* case, BOC Deputy Executive Director Cathy Potler asked whether a decision had been made as to who would provide discharge planning for inmates who receive correctional mental health services. Mr. Marrero said that discharge planning services will be provided by CHS staff directly. He added that the program, which will be run by Ron Greenberg (currently the Deputy Director of CHS' Services Assessment Unit), will report directly to Mr. Marrero and will begin operations on June 3rd.

Bureau Chief Leroy Grant requested that the Board renew all existing variances. A motion was approved without opposition, and the meeting was adjourned at 1:30 p.m.