

**NEW YORK CITY  
BOARD OF CORRECTION**

**December 11, 2003**

MEMBERS PRESENT

Stanley Kreitman, Chair  
John H. Banks III  
Richard Nahman, O.S.A.  
Michael Regan

Excused absences were noted for Vice Chair John R. Horan, and Members Louis A. Cruz and Jane Paley Price.

DEPARTMENT OF CORRECTION

Leroy Grant, Bureau Chief, Inspectional Services & Compliance Division (ISCD)  
Thomas Antenen, Deputy Commissioner, Public Information  
Florence Hutner, General Counsel  
Elizabeth Myers, Director, ISCD

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

James Capozziello, Deputy Commissioner for Health Care Access and Improvement  
George Axelrod, Director, Performance Monitoring and Quality Improvement  
Robert Berding, Director, Clinic Administration, Correctional Health Services (CHS)  
Benjamin Okonta, M.D., Acting Medical Director

OTHERS IN ATTENDANCE

Amy Anderson, NYU  
Paul D. Annetts, Field Supervisor, State Commission of Correction (SCOC)  
Michael F. Donegan, Counsel, SCOC  
Sara Goonan, Office of Management and Budget  
Becky Pinney, Project Director, Prison Health Services  
Jacqueline Riley, City Council, Finance Division  
Russell Unger, City Council, Legislative Counsel  
Paul von Zielbauer, *New York Times*

Chair Stanley Kreitman called the meeting to order at 1:10 p.m. A motion to approve minutes from the November 13, 2003 meeting was approved without opposition.

Chair Kreitman noted that the Department had changed its definition of reportable violence in the jails, and raised the issue of reports in which the circumstances giving rise to a reported inmate injury are "questionable". He said that inmates are known to falsely report accidents rather than acknowledge that an injury resulted from a fight because of fear of reprisals. Chair Kreitman asked what steps, if any, DOC takes to verify an inmate's account of how he suffered a serious, reportable injury. Bureau Chief Leroy Grant responded as follows:

This is a great concern of the Department. In response to questions raised at last month's meeting by Board Member Jane Paley Price, a new reporting category, "Serious Injury to Inmate" commenced in May. There were 14 reports in the last two months of FY03 (May and June, 2003). Thus far, there have been 51 reports in FY04.

DOC's Intelligence Unit examines injury accounts about which DOC officials are skeptical. The Unit interviews inmates in the area where the incident allegedly occurred, as well as staff on duty at the time. This is in addition to Security's investigations team. The Intelligence Unit works closely with the New York Police Department, using techniques that have been "very fruitful" in clarifying how injuries occurred. Sometimes attackers are arrested as a result of these efforts.

Chair Kreitman expressed satisfaction that the Department seeks to improve the accuracy of its statistics. Chief Grant added that DOC also relies on information from medical providers. Executive Director Richard Wolf said that the Board had brought to the attention of Deputy Commissioner Richard White several questionable reports. He said that Mr. White wrote that he agreed with our assessment that an injury, reported as having resulted from an accident, appeared to have been caused by an inmate-inmate fight, but noted that no perpetrator could be identified because the victim would not disclose the identity of his attacker. Mr. Wolf asked how DOC's statistics record an incident when the Department concludes that injuries are inconsistent with a reported accident: is it recorded as an accident or as an inmate fight, or is there another category? Chief Grant said the main issue is the burden of proof. He said that if DOC cannot prove the injury was caused by a fight, it will carry the incident as an accident. Mr. Wolf said that in the case he referred to, the Investigations Division wrote that the injury probably occurred from a fight and that the injuries were inconsistent with the inmate's statement regarding causation. Although there is no identified perpetrator, Mr. Wolf asked whether the incident would be carried as "serious injury from fight" or "serious injury from accident." Chief Grant said that the incident would be carried as reported by the inmate.

Chair Kreitman next raised the "suicide smocks" variance. He said that when the Department asked for the variance, it was granted promptly in September. Chair Kreitman said that the State Commission of Correction (SCOC) had been involved in suicide prevention discussions since May, and last month the Board was informed that DOC was awaiting an inspection by SCOC of cell housing areas in which inmates on suicide watch might be housed. Chair Kreitman said that it long has been the Board's view that inmates who have been identified as being at immediate risk of committing suicide should be transferred to a forensic psychiatric

ward in a hospital. He said that they should not be housed in a jail setting, noting that historically suicide watch in the City jail system has been used to focus uniformed staff's attention on inmates who have been identified by mental health staff as being potentially self-injurious. Chair Kreitman said that "suicide watch" status has never served as a substitute for forensic psychiatric observation and care because the City's potential liability is too great. He asked for the results of the SCOC inspection and a report on the variance. Chief Grant said that a new suicide watch Directive was approved yesterday, and he distributed copies to the Board. He said that DOC is monitored by two oversights, SCOC and BOC, and that just as the Department met with BOC and discussed the issue and addressed the Board's concerns, DOC engaged in a similar process with SCOC. He said this led to a DOC request that SCOC advise DOC on the manpower that would be required to observe inmates on suicide watch. He said SCOC conducted its inspection on December 2<sup>nd</sup> and 3<sup>rd</sup>, indicating that in some areas ratios of one officer to one inmate would be required, in others ratios of one to two or one to four would be sufficient. Chief Grant said that SCOC told DOC that in some areas the Department would have to retrofit the doors to provide better sight lines into the cell. He said the purpose of the process was to determine which options are best for the Department, and SCOC will provide a written report to DOC. He said DOC will review the report and determine which options to implement. Chair Kreitman described the issue as a "work in progress" and added that the discussion will continue after the Board has had an opportunity to review the new Directive. Board Member John Banks III asked if DOC had decided not to utilize the smocks because SCOC had said they were inappropriate for a dormitory setting. Chief Grant said this was not the case, and that DOC does intend to utilize the smocks. Mr. Banks asked what the State said about dormitory settings. Chief Grant said SCOC had concerns with line-of-sight. He noted that the "A" officer has direct line of sight into the area, but the "A" officer has other responsibilities and may be unable to watch what is occurring in the housing area, so the SCOC had concerns that for the floor ("B") officer, there were blind spots in the bathroom areas. He said SCOC indicated that DOC needed to post an additional officer adjacent to the bathrooms (a third officer), and that thereafter suicide watch inmates could be housed in a dormitory so staffed. Mr. Banks asked whether DOC discussed using suicide smocks in lieu of the additional staffing called for by SCOC. Chief Grant said there was no such discussion. Board Member Father Richard Nahman said that DOC has not implemented the variance, which is renewable month-by-month. He asked whether DOC seeks to have the variance renewed this month. Chief Grant responded that the implementation date is scheduled for December 22<sup>nd</sup>, and noted that the Directive includes a requirement that DOC report activities under the Order to the Board on a monthly basis. Mr. Wolf asked whether December 22<sup>nd</sup> is the date the Directive is to be effective, or the date that suicide smocks will be utilized. Chief Grant said December 22<sup>nd</sup> is the implementation date for the Directive. Mr. Wolf asked if Chief Grant knew when DOC would begin using the suicide smocks. Chief Grant said he did not have the information, but would obtain it and provide it to Mr. Wolf. Mr. Wolf asked if a decision had been reached that DOC would use suicide smocks in dormitories. Chief Grant said yes. Mr. Wolf noted that the condition for doing so is that only inmates wearing smocks may be housed in the dormitory. Chief Grant said that requirement and all others discussed with the Board would be met. Mr. Wolf said that in some cell areas a one-to-one staff-to-inmate ratio could be required. He asked why it would be necessary to require a "suicide watch" inmate to wear a suicide smock if the inmate is being watched twenty-four hours a day, seven days a week, by an officer whose sole responsibility is to watch the inmate. Chief Grant said he would take Mr. Wolf's comment under advisement. DOC General Counsel Florence Hutner said it would be easier to respond after seeing the State Commission's itemized report because some areas may not require one-to-one ratios. Chair Kreitman expressed the hope that next month there can be



some closure on the issues of suicide watch, suicide smocks, and coordination with the State Commission. Chief Grant said that SCOC should be providing its report within the next two or three weeks. Mr. Banks said that if DOC determines after reviewing the SCOC staffing requirements that changes are appropriate, it should submit a revised variance request next month. Chief Grant said that the smocks variance are part of DOC's "zero tolerance" approach to suicides. Mr. Banks said that we all share the view of "zero tolerance" to suicides. Board Member Michael Regan asked for additional information regarding retrofitting cell doors. Chief Grant said that the change would improve visibility into the cell by expanding the size of the door's window, which is currently six inches by twenty-four inches. Mr. Regan asked if the larger window posed a greater security risk. Chief Grant said no.

Chair Kreitman raised cold weather problems, including heat in some facilities. He asked about DOC's plans for maintaining adequate heat and hot water during the winter months, and also inquired about outdoor recreation when there is snow. He said that the Minimum Standards provide for indoor recreation. Chief Grant said that when there is inclement weather, DOC allows inmates to attend both outdoor and indoor recreation. He noted that inmates prefer indoor recreation during the winter months. Regarding heating, Chief Grant said that DOC is required by the *Benjamin* case consent decree to certify by October 15<sup>th</sup> that the system is operational. He said that trouble-shooting begins during the summer, but that if problems develop during the winter, DOC activates a contingency plan by which the Support Services Unit responds to an affected area and determines whether it can fix the problem or call a vendor, either Tamco or Acme, who responds and makes needed repairs. Chief Grant said that if the repairs cannot be made within the mandated six-hour time frame and the temperature drops below allowable levels, inmates in the affected area will be moved to housing with properly functioning heat and hot water.

Mr. Regan asked about the Brooklyn Correctional Complex (BCC). He said that he has noticed much construction on the building, and asked whether it is used to house inmates. Chief Grant said that the building is used to support DOC's court operations. He added that Central Booking for Brooklyn police cases is attached to the BCC. In response to Mr. Regan's question, Chief Grant said he did not know when construction would be completed. Mr. Banks asked for a target date. Chief Grant responded that there was a target date when he was warden at Brooklyn, but that was a long time ago. Mr. Banks requested that Chief Grant provide the Board with information in the capital budget for the next four years on construction at the Brooklyn Complex.

Mr. Wolf asked for a status report on repairs to the outdoor deck recreation area at the Vernon C. Bain barge. Chief Grant thanked the Board for the variance, and reported that repairs are proceeding on schedule. He added that gym floor repairs requested by the Board were completed. He said that more VCBC inmates are attending indoor recreation than attended outdoor recreation in the past. Mr. Wolf said that during last weekend's snow storm, the jails did not offer indoor recreation, and the numbers of inmates who attended outdoor recreation were very low. He said that when there is much snow or ice, or when a Nor'easter causes driving rain, the Department should offer indoor recreation. Chief Grant said the point was well taken and that he would look into the suggestion.

Father Nahman noted that the issue of outdoor recreation raises again the issue that DOC is building a new facility which, as presented in design, does not meet the Minimum Standards,

and the Board made this known to the Department. He asked for the status of the project. Ms. Hutner said that it is in redesign, that DOC has not seen the final design yet, which is still with the City's Department of Design and Construction. Mr. Wolf asked Ms. Hutner to provide copies of the design when DOC receives it.

Chair Kreitman asked Department of Health and Mental Hygiene (DOHMH) Deputy Commissioner James Capozziello for an update on correctional health issues. Mr. Capozziello reported that a director of psychiatry will begin working on January 5, 2004, and that the Board will meet him at its next meeting. Mr. Capozziello presented a copy of the third quarter Prison Health Services contract performance indicators (PIs). He said that only five PIs were not met, which equals the lowest number of not met PIs since the contract began. Chair Kreitman reviewed the document, noting that the five PIs are: intake history, mental health documentation, on-Island specialty care, laboratory, and patient problem list. Mr. Capozziello reported that a Rapid Test project for HIV will be initiated beginning in January. He said the new test should increase the number of inmates who are willing to be tested, and enable health providers to identify inmates with HIV infection so that they can receive treatment. He said that the project should result in an updating of 1999 sero-prevalence information, and providers will have a better sense of the scope of under-reported and under-tested inmates. He said the 1999 information showed that 8% of the male population and 18% of the female inmates were infected but did not know their status. Chair Kreitman asked whether inmates who are HIV positive receive the latest and best medications. Mr. Capozziello said yes. Mr. Banks asked for the total population of HIV positive inmates. Mr. Capozziello said that Dr. Parvez, who is DOHMH's medical director for correctional public health services, has the information and will report more fully at the Board's next meeting. Dr. Ben Okonta, CHS's acting medical director, estimated that between 10 and 20% of the inmate population are HIV positive. Mr. Capozziello said that the testing is voluntary, and that DOHMH received an allotment of 10,000 free tests from the Centers for Disease Control, approximately a six-months supply. He added that testing will be done in various ways in all facilities, some at intake and some at other times, to determine the best way to implement testing. He said this experimenting will continue for three months, followed by three months using the best procedure. He said the goal is to have testing available to every inmate at every facility, and the pilot will allow DOHMH to make projections as to how much to buy on an ongoing basis and whether additional staffing will be required. He added that the rapid test kits must be discarded after six months. Mr. Capozziello said that by July 1, 2004 DOHMH hopes to begin an ongoing operation. Mr. Wolf asked if the rapid test is more likely to yield a "false positive" than the slower test. Mr. Capozziello said that if the result is positive, the provider will conduct a confirmatory test, but he added that the test is 99.6% accurate.

A motion to renew existing variances was approved without opposition. Father Nahman said that the suicide smocks variance needs to be resolved next month. Chair Kreitman agreed, wished everyone happy holidays, and adjourned the meeting at 1:40 p.m.