

NEW YORK CITY
BOARD OF CORRECTION

October 9, 2003

MEMBERS PRESENT

Stanley Kreitman, Chair
John R. Horan, Vice Chair
Louis A. Cruz
Richard Nahman, O.S.A.
Jane Paley Price

Excused absences were noted for Members John H. Banks III and Michael Regan.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Tom Antenen, Deputy Commissioner for Public Information
Roger Parris, Deputy Commissioner for Programs
Judith LaPook, Special Counsel
Leroy Grant, Bureau Chief, Inspectional Services & Compliance Division (ISCD)
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)
Pamela Johnston, Director, Clinic Operations, CHS

OTHERS IN ATTENDANCE

Amy Anderson, NYU
Sara Goonan, Office of Management and Budget
Jacqueline Riley, City Council
Russell Unger, City Council
Paul von Zielbauer, *New York Times*
Milton Zelermyer, Legal Aid Society, Prisoners' Rights Project

Chair Stanley Kreitman called the meeting to order at 1:05 p.m. A motion to adopt minutes from the Board's September 11, 2003 meeting passed without opposition.

Chair Kreitman noted that last month the Board granted DOC a variance to require inmates on suicide watch to wear "suicide smocks" and set as a condition the requirement that the Department report regularly on the variance. Commissioner Martin Horn said that at BOC's September meeting the Department agreed to some changes in its variance implementation plan. He said DOC was finalizing the Operations Order and procuring the paper undergarments that the Board requested DOC provide to the inmates. He said that staff training will occur once the Order is finalized, and he expects implementation to occur during November. Chair Kreitman said that there had been no suicides since the September meeting, although there had been an attempted suicide. He asked if DOC had changed suicide prevention procedures. Commissioner Horn said, working closely with the Department of Health and Mental Hygiene (DOHMH), DOC had changed many procedures, including: roll call training; providing staff with palm cards listing suicide warning signs; and, showing a videotape at inmate orientation. He said there have been eight attempted suicides in Fiscal Year 2004, which is more than last year-to-date.

Board Member Louis Cruz said that from his twelve years on the Board, he has come to expect that when DOC requests variances, which always are emergencies, it should be prepared to implement a variance when it is granted. He asked why that was not so in this instance. Commissioner Horn said that this is not what occurred. Mr. Cruz said the Minimum Standards require that the Board hold a "more compelling hearing" before granting variances. Commissioner Horn said that Mr. Cruz was raising a Board issue. He said it was for DOC to request a variance, and for the Board to decide how to act upon it. Mr. Cruz said this was a point well taken, and asked whether DOC should not present a complete implementation plan before asking for a variance. The Commissioner said that DOC provided a plan and a draft Operations Order. Chair Kreitman said that the Board insisted on some changes and modifications, including the undergarments.

Chair Kreitman raised the issue of serious injuries to inmates. He said that he has seen on his beeper that the Central Operations Desk (C.O.D.) has been reporting with increased frequency inmates suffering serious, reportable injuries from inmate-on-inmate fights. He said that in the first eight months and two days of 2003, C.O.D. reported 32 serious inmate injuries from fights - the same number of reports issued in the preceding eight years. Chair Kreitman asked for a report from Commissioner Horn. Commissioner Horn reported as follows:

A self-explanatory letter on this issue from DOC staff to BOC staff was inadvertently delayed. The simple answer is that, following conversations with DOHMH and the Board, DOC expanded the definition of reportable injuries to inmates. Formerly, a reportable injury was one that "creates a substantial risk of death or disfigurement or loss or impairment of a bodily organ..." The new definition expands the definition to add fractures, including fractures to fingers and toes. The change went into effect in June, 2003, so one would expect the numbers to be higher.

The total number of injury reports in this fiscal year is running at an annual rate of approximately 12,000. Last year it was 16,000 and 15,000 in 2002. Inmate-on-inmate injury reports for the first quarter, when

annualized, compute to approximately 5,600. Last year there were 7,700 and the year before there were 6,600.

Board Member Father Richard Nahman asked why the definition excludes fractures to fingers and toes. Mr. Cruz reiterated Father Nahman's question. Commissioner Horn said he'd have to go back and "look at our thinking." He asked why these fractures should be included. Father Nahman said that the Commissioner gave them as examples in his report as to why the numbers of reported serious injuries to inmates from fights had increased. Board Member Jane Paley Price said it was good that the definition was expanded, because it provides a better sense of the reality of inmate-inmate violence. She asked whether the incidents have been parsed for gang involvement. Commissioner Horn said that DOC has learned that most incidents occur in housing units, that none of the incidents took place in housing areas that had been part of the S.A.I.D. program, that there has not been an increased reliance on dormitory housing nor has DOC reduced staffing in dormitories. Executive Director Richard Wolf added that DOC always reviews each incident for gang involvement and other special circumstances. He said that the expanded definition does not change the research that DOC performs, but it does broaden the information presented to senior DOC managers. Mr. Wolf said that Chair Kreitman told him well before the teletype was published, he noticed what appeared to be a significant increase in reported serious injuries. He added that a review of the reports reveals that this year, up until when the teletype expanded the definition, there had been sixteen reports from C.O.D. He said that in the preceding four years, there had been seventeen reported serious injuries to inmates from fights. Mr. Wolf said there was a big "uptick" in serious injuries from fights this year, even before the definition was expanded. He noted that BOC's letter asked whether factors Board staff had thought of might have contributed to the increase in reports, and asked whether anything else had occurred to DOC officials as contributing factors. Commissioner Horn reiterated that inmate on inmate injury reports were down. Mr. Wolf said he was talking about "serious injuries to inmates", not every time an inmate is taken to the clinic because he/she is involved in an inmate-inmate incident. Commissioner Horn said that whether the injury is serious may be a function of "whether the inmate who throws the punch has better aim". Mr. Wolf said that, unless the Commissioner is asserting now that in the first six months of 2003, inmate-aggressors have suddenly developed better fighting skills or inmate-victims are much worse fighters than they used to be, the Commissioner's response doesn't go to the issues the Board is raising. Commissioner Horn added that the severity of the injury could go to how brittle the inmate's bones are. Mr. Wolf concluded by saying that the Board was uncertain as to what the increased reports mean, but noted BOC's concern that staffing cuts and overtime are contributing to the severity of injuries perhaps because inmates are being beaten longer before staff can intercede. Commissioner Horn said that was an absolutely appropriate question to ask. He said that the incidents overwhelmingly occur in housing units, where staffing complements have not been changed since January when he became Commissioner. He added that staff had been increased in corridors of AMKC and GMDC. Mr. Wolf asked whether overtime has increased significantly, and whether that might be affecting staff's reactions to inmate-inmate incidents. Mr. Wolf said that in the early 1990s the Board observed a correlation between high overtime and the highest reported violence levels. Commissioner Horn said that overtime indeed is up because DOC continues to staff critical posts notwithstanding layoffs. He noted that positions that were eliminated were those that historically had been available for shift reduction. Mr. Wolf said it was worth examining whether high overtime was producing tired officers who reacted "differently to a situation". Mr. Cruz asked how many of the aggressors were drug addicts. The Commissioner replied that 70% of inmates have drug histories, and added that the

S.A.I.D. program did not reach all of them. He said that none of the serious injuries resulted from fights occurring in housing areas that formerly had been S.A.I.D. areas.

Chair Kreitman said that Father Nahman was particularly interested in DOC's recent efforts regarding discharge planning, and invited the Commissioner to comment on his recent City Council testimony. Commissioner Horn reported as follows:

A complicated planning process is underway. DOC is reorganizing to focus primarily on City sentenced prisoners. More than 25,000 of the City's 110,000 new admissions are released within three days; 65% are out within seven days; 75% are released within 14 days. This means discharge planning must begin when inmates enter into the system. DOC is working with community-based organizations to better understand what DOC needs to know about an inmate entering the system to better plan for discharge. One goal is to reduce the number of sentenced inmates who depart the system via Queens Plaza. Most detainees leave the system via the courts rather than from the jails.

The City has entered into a more than \$5 million contract with the Center for Employment Opportunities to provide transportation off Rikers Island, immediate transitional employment and long-term employment assistance to up to 5,000 sentenced inmates per year. Additionally, three City Council-funded contracts totaling \$2.7 million have been re-configured to service sentenced inmates. Each vendor is required to provide off-Island transportation, to develop plans to promote discharged inmates' sobriety, housing and employment. Each vendor must "deliver" on two of these three components.

Sentenced inmate work cadre no longer will be returned to Rikers Island for release. Instead, they will be released directly from the facility in which they have been working. This will eliminate the need to release them at 5 a.m. Also, CASES-program participants will be released from the Manhattan Detention Complex to CASES employees who will escort the discharged inmates directly to the drug treatment or employment programs in which the State Parole Board agrees to place them as alternatives to returning them to State prison.

Working with the Department of Homeless Services, DOC is studying the large number of inmates who move between jail and homeless shelters, in an effort to mitigate their impact on shelters upon release. A long-term planning group has been established, and goals of housing, sobriety and employment will be pursued over the next several years.

Father Nahman complimented Commissioner Horn on the efforts he outlined. Mr. Cruz seconded Father Nahman's sentiment. Mr. Cruz added that for the twelve years that he has been on the Board of Correction, BOC repeatedly has called upon DOC to establish such protocols. He said he was very pleased that plans were moving forward. He added that another idea promoted by the Board was implemented by former Commissioner Kerik - that DOC re-arrest

inmates who assault other inmates.

Chair Kreitman next turned to correctional health matters. He asked for an update on sick call at the Anna M. Kross Center (AMKC). DOHMH Deputy Commissioner James Capozziello reported that staff has been identified, equipment has been made available, and supplies are ready, but some physical plant problems, including running water and additional lighting, have delayed opening the three new sites. Deputy Executive Director Cathy Potler asked whether additional providers will staff the new mini-clinics in the West dormitories. Mr. Capozziello said that there will be additional staff. Mr. Cruz said that providers complain to him about being shifted from facility to facility and being required to work excessive overtime. He asked what is being done about these complaints. Mr. Capozziello said that DOHMH remains in discussion with Prison Health Services (PHS) about different staffing models. He said that part of the problem, particularly with mental health staff, has been the shifting of staff to satisfy the contractual matrix and avoid fines. He said that it is not clear that the matrix continues to be the most efficacious way of monitoring the availability of staff. Mr. Capozziello said that the matrix causes PHS to move staff from clinics with high need to others with lesser need but absent staff. He said this is counter-intuitive and wasteful. He said the goal is to fill needs without exposing PHS to liquidated damages. Mr. Cruz asked whether this is contrary to the contract, and whether the City should reduce its payments to PHS. Mr. Capozziello said that the problem is not the "amount of the total pie" of mental health staffing, but rather that the matrix does not allow PHS the flexibility to move providers to clinics that have more patients waiting to be seen. He said this is because the contract requires specific numbers of providers to be on-site at each clinic, regardless of the clinic's actual needs during that tour. Mr. Cruz asked whether if PHS's manpower will be reduced because of flexibility in allowing them to move from facility to facility as needs arise, should there not be a reduction in the contract price? Mr. Capozziello said this would be the case only if the net result was a reduction in staff. He added that there is no evidence yet that adjusting the matrix would result in fewer providers working in the system.

Chair Kreitman said that of the 40 contract Performance Indicators, 13 are "met", 16 are "substantially met", and 8 were "not met", and liquidated damages were \$41,000, as compared to \$30,000 in the first quarter of the year. He asked whether Mr. Capozziello is satisfied with PHS's performance under the contract. Mr. Capozziello said that in some indicators, PHS is being held to a higher standard. He said that PHS's percentage of compliance, in the aggregate, is probably higher than it ever has been. He cited mental health documentation as an example, noting that compliance had been as low as 14% and has improved significantly, so he believes PHS is "moving in the right direction". Mr. Capozziello said that minor changes in performance resulted in some cases in a PI being adjudged "not met". He gave as an example follow-up to abnormal lab results, where follow-up is required within 48 hours. He said that a slight decline, of less than 1%, resulted in a "not met" determination. Ms. Potler said that some Indicators that were "not met" in the past continue in that status. Mr. Capozziello said that these are under review. He said that failure to check-off one box on a mental health form should not automatically cause the entire form to fail. He said the question is whether an Indicator should fail when the information that is lacking is not "information that you need to have". Mr. Cruz asked about the PI "Intake History and Physical", which was not met. He noted that "Infection Control" was "substantially met" as were other related indicators. He asked how other Indicators can be "substantially met" if the Intake PI is "not met". Mr. Capozziello said the problem may be that the physical was performed, but not all of the required documentation was completed. He added that this is a matter of contractual negotiation. Mr. Capozziello cited another example, availability of medical records. He said the Indicator does not require that the record be "in the clinician's hands" when

seeing the patient. He said DOHMH is not satisfied with this as a PI, so DOHMH has done a separate evaluation to determine whether the clinician has the medical record when the patient encounter occurs. He said that the clinician does have the record more than 90% of the time at all clinics except at AMKC, which lags substantially behind (44% to 50%). Mr. Cruz asked for information about overtime, by clinic. Mr. Capozziello said he would provide the information. Ms. Potler said that DOHMH is responding promptly to matters BOC brings to its attention. She added that DOHMH is asking relevant public health questions.

Mr. Wolf introduced a new, temporary BOC staff person, Nikki Okafor. He noted that Ms. Okafor received her masters degree in criminal justice from John Jay.

A motion to renew existing variances was approved without opposition.

Mr. Cruz said that the Board met in Executive Session last week to evaluate several issues brought to it by DOC, in particular the Department's request for permission to "tap" all inmate phone calls. He asked Commissioner Horn whether he has any idea how DOC would implement its plan if permission were to be granted. Commissioner Horn said he had received a letter from the Board that asks a series of implementation questions. He said DOC will be providing answers. Chair Kreitman said that the Board put in writing a number of questions, such as privacy issues, lawyer-client and others, and that prior to the Commissioner presenting the request to the Board, BOC would receive answers to the questions. He said the Board is waiting for DOC to respond with its answers and a resubmission of its request. Mr. Cruz asked if DOC will resubmit the request. Commissioner Horn said that "the request is there, we will answer the questions asked by the Board." Mr. Cruz said it was the opinion of the Board in Executive Session that DOC should either withdraw its request or the Board would refuse to accept it at this point. Chair Kreitman said that on July 28th the Commissioner sent a letter to the Board requesting a variance. The Board checked the constitutionality and then met in Executive Session. He said that as a result, Chair Kreitman sent a letter, stating, "I am writing to inform you that the Board of Correction will take no action at this time on your letter of July 28th..." Chair Kreitman said the letter was reviewed by BOC Vice Chair John Horan. Mr. Cruz replied that this was not the essence of what the Board had agreed to in Executive Session. Chair Kreitman said he thought that it was, and said that it was the most reasonable way to approach the issue. He added that BOC staff asked DOC to clarify a number of issues, and these are listed in the letter, as are questions about cost and whether all calls will be monitored, or a statistical sampling. He said that when the Board gets answers to the questions, it can have an intelligent debate of the issue. He concluded that the request has not been withdrawn, but the Board will take no issue at this time.

The meeting was adjourned at 1:58 p.m.