

**NEW YORK CITY
BOARD OF CORRECTION**

September 11, 2003

MEMBERS PRESENT

Stanley Kreitman, Chair
John R. Horan, Vice Chair
John H. Banks III

Excused absences were noted for Members Louis A. Cruz, Richard Nahman, O.S.A., Jane Paley Price, and Michael Regan.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Tom Antenen, Deputy Commissioner for Public Information
Roger Parris, Deputy Commissioner for Programs
Florence Hutner, General Counsel
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
Ben Okonta, M.D., Acting Medical Director
George Axelrod, Director, Performance Monitoring and Quality Improvement
Robert Berding, Deputy Director of Clinical Administration

OTHERS IN ATTENDANCE

Amy Anderson, NYU
Madeline deLone, Legal Aid Society, Prisoners' Rights Project (PRP)
Darnell C. Grisby, Independent Budget Office (I.B.O.)
Bernard O'Brien, I.B.O.
Trevor Parks, M.D., Medical Director, Prison Health Services (PHS)
Becky Penney, Project Director, PHS
Jacqueline Riley, City Council
Russell Unger, City Council
Paul von Zielbauer, *New York Times*
Dale Wilker, PRP

Chair Stanley Kreitman called the meeting to order at 1:10 p.m. and asked for a moment of silence for those who perished in the September 11, 2001 attacks. A motion to adopt minutes from the Board's July 10, 2003 meeting passed without opposition. A quorum was not present, and Chair Kreitman announced that BOC Executive Director Richard Wolf would conduct a telephone poll of absent members to secure approval of the July minutes.

Chair Kreitman asked Department of Correction Commissioner Martin Horn to comment on the recent decision in the case of *Benjamin v. Fraser*, noting that the decision was strongly influenced by the Prison Litigation Reform Act. Chair Kreitman asked Commissioner Horn to discuss DOC's plans for complying with the decision. DOC General Counsel reported as follows:

Last week's decision by the Second Circuit Court of Appeals left intact most of District Court Judge Harold Baer's prior Orders. DOC already is in compliance with most provisions and, where it has not yet achieved compliance, it is working to obtain it. The Second Circuit decided in favor of the City on two aspects of the Orders that had been stayed pending appeal. These are: (1) bed spacing - DOC is not required to separate beds in dormitories by at least six feet from center to center and (2) lighting levels - DOC is not required to provide at least 20 foot candles of light. Foot candles is a standard of light measurement. The lighting issue was remanded, and Judge Baer will have to determine what light level is appropriate, now that the Second Circuit rejected Judge Baer's 20 foot candle standard. The only matter for which the Court granted Legal Aid's cross-appeal pertained to sanitation in the food service preparation areas in three jails, the George R. Vierno Center (GRVC), the Adolescent Reception and Detention Center (ARDC), and the Anna M. Kross Center (AMKC). These kitchens all have been closed and replaced by a large new kitchen facility at AMKC.

Chair Kreitman asked if a representative of the Prisoners' Rights Project (PRP) wished to comment on the decision. After distributing copies of the decision, staff attorney Dale Wilker responded as follows:

PRP challenged Judge Baer's decisions regarding sanitation in kitchens, medical areas and housing areas, ventilation, excessive heat and cold, and several other issues. Most importantly, the Second Circuit affirmed the need for the external oversight provided by the Court's monitor, the Office of Compliance Consultants. As to Ms. Hutner's comments about DOC's level of compliance, compliance is to be determined by Judge Baer. OCC continues to find non-compliance in different areas at various jails, including sanitation and cells that have no lights. PRP is working to develop a comprehensive solution to the problem of temperature control, especially when it is very hot, when inmates who are elderly, sick and taking certain medications are at risk. PRP is suggesting that at-risk inmates be assigned to the 5000-6000 air-conditioned beds in the system. Regarding lighting, PRP interprets the Court's decision as stating that the Constitution does not set 20 foot candles as a standard for liability. There

were readings of undetectable light in some housing areas. PRP believes that although the Court did not find 20 foot candles to be required by the Constitution, it may nonetheless be an appropriate remedy.

Mr. Wolf asked Ms. Hutner and Mr. Wilker asked whether the continued reports of noncompliance mentioned by Mr. Wilker rises to the level of an "ongoing constitutional violation" contemplated by the PLRA. Ms. Hutner said that a draft OCC report finds vast improvement in environmental conditions throughout the jails. She said that the instances of noncompliance are relatively isolated, suggesting that they do not meet the PLRA test. She said that 100% compliance is unrealistic. Mr. Wilker said that much of the improvements have come during Commissioner Horn's tenure. He added that when OCC is satisfied that there is compliance, it will recommend termination of the decrees.

Chair Kreitman next raised the issue of DOC's request for a variance to require inmates who are on suicide watch to wear special "suicide smocks". He said that the Board had studied the issue carefully. Noting that he and Mr. Horan each had tried on the smock, Chair Kreitman asked Commissioner Horn why he had chosen this particular smock. Commissioner Horn reported as follows:

Through a grant from the National Institute of Corrections, DOC hired Lindsey Hayes, a nationally recognized expert on jail suicide prevention. Mr. Hayes reviewed this year's six suicides, as well as others in earlier years. Mr. Hayes told DOC that New York City's suicide rate compares very favorably with the rest of the country. He noted that the first six months of this year were an aberration, in terms of the number, types of inmates, and times of death.

Of the 47 suicides since 1993, 37 were by hanging. Of these, 22 were accomplished with a bed sheet and 15 with an article of clothing, shoelace or belt. 42 of the 47 suicides occurred in cells.

DOC is changing its approach to the prevention of suicide. Together with the Department of Health, DOC will be moving inmates who are thought to be suicidal out of cells and into dormitories, unless cell housing is "unavoidable". The suicide smock was used by Commissioner Horn in Pennsylvania, and is one of several things that will be done to change procedural, clinical and environmental factors contributing to suicides. He provided BOC staff with a partial list of jurisdictions that already use the suicide smock.

DOC believes that use of the smock in limited circumstances that are clinically supervised, together with a treatment plan, will help deter suicides. A person can kill himself in under five minutes.

There are several similarly-designed smocks on the market. DOC staff evaluated the one it selected and concluded that it is suited to DOC's purpose.

Chair Kreitman said that the Board supports DOC's efforts to prevent inmate suicides. BOC Deputy Executive Director Cathy Potler explained that Board staff have been working together with DOC staff to develop the Operations Order. She said that one of its good features is that it promotes the easier identification of inmates on suicide watch when they are outside of their housing areas. Vice Chair John Horan asked if all inmates on suicide watch will be housed in one area. Commissioner Horn said that in the past, some inmates were designated by mental health staff as being on suicide watch but were not deemed to require mental observation housing. He said that it would defeat the smock's purpose if an inmate wearing a smock is housed in a dormitory with inmates in civilian clothing and has a sheet. Mr. Wolf said that this point was one of the key elements of the discussions that occurred between the staffs of BOC and DOC, and reported as follows:

The discussions were very successful and demonstrate the valuable service and assistance that the Board provides to the Department. The City's suicide rate is as low as it is, in large part, because of the Board's Mental Health Minimum Standards, which when passed in 1985 made New York City the first jurisdiction in the country to voluntarily, without court intervention, require itself to upgrade the quality and quantity of mental health services available in the jails. The Standards require services to detect and treat those at risk for suicide, and mandate that there be an inmate observation program, by which trained inmates assist staff in monitoring at-risk inmates.

BOC staff observed that several provisions should be added to enhance the original draft Order, and the Department agreed. For example, the original contained no provision for undergarments for any inmate on suicide watch. The Order now mandates that all suicide-watch inmates wear disposable underpants. The original Order did not require that suicide-watch inmates be housed separate and apart from inmates who slept on sheets and wore civilian clothing. The frequency of exchange of the heavy smocks, which will cause inmate-wearers to perspire, was changed at our request to daily from "as needed".

Mr. Wolf asked Ms. Potler to describe some of the other changes that will appear in the final Operations Order. Ms. Potler reported as follows:

The draft Order would have required suicide-watch inmates to surrender all personal health-care items, including soap and a toothbrush, and books, magazines and photographs. DOC agreed that because suicide-watch is supposed to be preventive, not punitive, suicide-watch inmates would retain these items unless mental health staff expressly required that they be removed.

BOC long has advocated for irregularly-timed tours by officers in housing areas where inmates are on suicide watch, or in the Contagious Disease Units, or the North Infirmary Command, or in protective custody areas. BOC's studies of past suicides have established that when officers tour regularly every half-hour, inmates know when they have a "window of

opportunity" to attempt suicide. BOC staff is therefore pleased that the Order will require irregularly-timed tours - at least four per hour. Board staff have urged DOC to remove the pre-printed 15-minute time intervals from the officers' tracking forms, to underscore the notion that officers must vary the times that they perform their tours.

Mr. Wolf said that the smocks pose particular comfort problems for women. He said that women could attempt to hang from a bra, yet he noted that many women have complained that the lack of support could lead to back pain and to chafing. He asked if DOC could return to the marketplace and seek a solution. Commissioner Horn said that a product has been ordered, which he described as a paper garment. He said he did not know how much support it provides, and added that it provides some "modesty protection" and protection from chafing. He added that the smocks will be washed several times to soften them before distribution. Commissioner Horn said that the goal is frequent contact between the inmate on suicide watch and mental health professionals. He said this will result in constant reevaluations of status, and should shorten the length of time an inmate remains on suicide watch. The Commissioner said that if a treatment plan fails to soon stabilize an inmate on suicide watch, the inmate should be transferred to a psychiatric hospital ward. He said that earlier this year there were almost 70 inmates on suicide watch in the jails; the number now is approximately 30. Mr. Horan asked what will be done with the occasional inmate who goes to trial. Commissioner Horn said that an inmate who is on trial will be allowed to wear civilian clothing, which is his constitutional right. He added that a non-trial court appearance carries no such right, and that inmate will wear a jumpsuit to court. Commissioner Horn said that if an inmate is on trial, he will be given paper shoes, no ties and no belts. Upon further questioning from Mr. Horan, Commissioner Horn said "We would give it to them, I guess, at the last moment." He added that we are one of the few jurisdictions that allow inmates to wear their own clothing, something that the Commissioner said he finds "objectionable".

Chair Kreitman told Board Member John Banks III (who joined the meeting at this point) that he and Vice Chair Horan were prepared to grant DOC a temporary variance to use the suicide smock. Mr. Banks asked Commissioner Horn whether DOC had looked at other manufacturers. Commissioner Horn said that DOC had done so. Mr. Banks asked how many. The Commissioner said that there weren't many, but DOC looked at three or four. Mr. Banks asked how DOC went through the procurement process, and asked whether it was a sole source contract. Deputy Commissioner Roger Parris said DOC contacted three manufacturers. Commissioner Horn said that DOC complied with the Comptroller's directives regarding procurement. Mr. Banks said that usually if a purchase is below a certain dollar amount, an agency is authorized to make telephone calls to three vendors. Commissioner Horn said he did not want to misrepresent how the procurement was done, and would check and let the Board know. Vice Chair Horan said that the main impetus seemed to be Commissioner Horn's experience in Pennsylvania. Chair Kreitman said that, subject to a telephone poll of the other members to secure a majority, the Board would approve a temporary variance. He asked for a report by the next BOC meeting. The Commissioner said he would track the use of the smock and report to the Board.

Chair Kreitman next turned to correctional health matters. He asked about the Department of Health and Mental Hygiene's (DMHMH) progress in filling key management positions. Deputy Commissioner James Capozziello reported that the Director of Psychiatry has been hired and will begin working early in October. Mr. Capozziello said that Dr. Ben Okonta

continues to serve as Acting Medical Director as no permanent selection has been made. Mr. Capozziello said DOHMH may have to engage an executive search firm to help fill the position. He said that he continues to fill the executive director position, and expects to remain in the position for several more months.

Chair Kreitman noted that the Board's field staff at AMKC reported that there have been occasions recently when some inmates did not have access to sick call. Ms. Potler said that provider staffing shortages at AMKC have prevented some inmates from being seen within designated time frames. She said this is attributable in part to the need for AMKC providers to be "pulled" to work at other jail clinics so the vendor can avoid fines under the matrix staffing plan set forth in the contract. Mr. Capozziello said that, without necessarily agreeing with the cause of the problem, he acknowledged that there was a problem regarding sick call. He said that a short-term solution was implemented by expanding the hours of the mini-clinic in the rear of AMKC, but added that beginning sick call at 5:30 a.m. was not seen as significantly improving access. He said that, working with DOC and the health vendor, DOH identified three rooms in the West dormitories that will be converted into additional sick call facilities. He said these should be available in two to three weeks; until then, the expanded hours will continue to ensure that all inmates have access to sick call.

Chair Kreitman asked about the performance of the health care vendor, Prison Health Services. Mr. Capozziello said he would provide the Board with a report on contract Performance Indicators (PIs), and noted that overall performance is good. He said the contractor is being flexible in helping DOH develop its plans to change the delivery of correctional health services. He noted that six or seven Indicators were not met. Mr. Wolf reminded Mr. Capozziello that he had told the Board of DOH's plans to revise the PIs to better measure outcomes. Mr. Capozziello said that a discussion has begun within Correctional Health and will be expanded to the rest of DOH in the next couple of weeks. He said outcome measurement is difficult in a jail setting inasmuch as 60% of inmates are out of the system within 14 days. Mr. Capozziello said that for this reason, Correctional Health will work to develop new measurements with other DOHMH offices, including the Bureau of Sexually Transmitted Diseases, the HIV Bureau and the Tuberculosis Bureau. Mr. Wolf asked for an update on Dr. Parvaez's comments at an earlier BOC meeting that DOHMH intended to approach correctional health more holistically, integrating prevention and treatment in the community with services in the jails. Mr. Capozziello said that Tracy Hatton who runs DOHMH's HIV-MedSpan Unit to work to help develop a concept paper for aftercare services or health "drop-in services" for inmates. He said that inmates' health issues may be diagnosed for the very first time in jail, and DOHMH believes it is incumbent upon it to inform patients, including former inmates, and to help them access in the community needed medical services. He said this concept could extend to scheduling services in the community for inmates who are about to be discharged, although this would be quite complicated. Commissioner Horn said that since DOHMH has taken over administering the contract, communications have improved significantly. He added that in AMKC in August, 100% of sick calls were held; in July 99.8%, including 1370 of 1377 eligible housing areas; in June, 99.5% of sick calls were held.

A motion to renew existing variances was approved by the Members present, subject to approval of a majority of the Members by telephone poll. The meeting was adjourned at 1:55 p.m.