

**NEW YORK CITY
BOARD OF CORRECTION**

March 9, 2000

MEMBERS PRESENT

John R. Horan, Acting Chair
Canute C. Bernard, M.D.
Stanley Kreitman
Barbara A. Margolis
David A. Schulte

Excused absences were noted for Board Members Louis A. Cruz,, David Lenefsky, and Richard Nahman, O.S.A..

DEPARTMENT OF CORRECTION

Gary Lanigan, First Deputy Commissioner
Roger Jefferies, Deputy Commissioner
Elizabeth Loconsolo, General Counsel
Robert Davoren, Deputy Chief
William Hurley, Assistant Chief
Liz Myers, Inspection and Compliance Division

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Executive Director
Michael Tannenbaum, Chief Operating Officer
Patrick H. Brown, M.D., Medical Director
Arthur Lynch, Director of Mental Health
George Axelrod, Director of Risk Management
Robert Berger, Director, Delivery Assessment Unit
Heidi Rosen, Analyst

OTHERS IN ATTENDANCE

Jennifer Gonnerman, Harper's Magazine
Tracie Lucas, State Commission of Correction
Dale Wilker, Prisoners' Rights Project, Legal Aid Society

Acting Chair John R. Horan called the meeting to order at 1:05 p.m. He announced that the Board's regular meetings would take place on the second Thursday of each month. The minutes of the Board's February 9, 2000 meeting were approved unanimously.

Mr. Horan announced that the law firm of Paul, Weiss, Rifkind, Wharton & Garrison would be assisting the Board in its review of the Minimum Standards. He then invited Correctional Health Services (CHS) Executive Director Ernesto Marrero to discuss with the Board CHS's monitoring of correctional health services in light of the decision not to continue with St. Barnabas Hospital as provider beyond the current calendar year. Mr. Marrero said his staff checks each clinic every day. He added that CHS's Service Delivery Assessment Unit is responsible for ensuring that all policies and protocols are followed, and to review contract performance indicators. Mr. Marrero said that the review of the fourth quarter of 1998 had been completed, and that the first quarter of 1999 is almost completed. He said that estimating when this review and those of the second and third quarters of 1999 will be completed is difficult because the reviews are contingent upon chart reviews, and charts are not always available. BOC Executive Director Richard Wolf asked for a status report on the Request for Proposals (RFP) process. Mr. Marrero said that a draft RFP had been completed and given by CHS to other agencies a few days ago, and comments are due early next week. Thereafter, the agencies will meet to finalize the document. Mr. Marrero said he hopes to begin the Health & Hospital Corporation's internal RFP review process before the end of March. He said this plan, if followed, would enable CHS to receive bid proposals in a couple of months, a vendor would be selected by the summer, transition to the new vendor would begin by November 1, 2000, and a new contract would begin on January 1, 2001. Board Member Barbara Margolis asked about the length of the new contract. Mr. Marrero said he expected it to be a three-year contract, with a one year option to renew, solely at the discretion of the City. Board Member David Schulte asked when the current contract expires. Mr. Marrero said the contract expires on December 31, 2000. Mr. Marrero said that in February, St. Barnabas had given a written notice of its intention to terminate the contract in twelve months, leaving open the possible legal interpretation that if the City were to exercise its option St. Barnabas would be obliged to continue providing services through February, 2001. Mr. Wolf asked if the announced end of the contract would change what CHS expects its monitors to see in the field over the next several months. Mr. Marrero said he hoped that there would be no new problems during the transition. Mr. Wolf asked if the structure or scope of the new RFP will be different from the RFP which resulted in St. Barnabas becoming the vendor in 1998. Mr. Marrero said that several ideas are being considered, including separating the on-Island services from those provided at hospitals, and having a line-item budget instead of a capitated-rate budget. Mr. Schulte asked if the contract was limited to Rikers Island. Mr. Marrero said it currently covers Rikers Island, the Manhattan Detention Complex and the Vernon C. Bain Barge (VCBC). He said he expects that CHS will continue to provide direct services at the Brooklyn, Bronx, and Queens Houses of Detention.

Mr. Wolf asked about plans to reopen the VCBC and to move Dorm 4 services to another location. He said that the Board had been told that the VCBC would reopen on March 6th, but that this had been delayed. Mr. Marrero said that DOC and CHS would be meeting soon to

discuss the Dorm 4 issue. DOC First Deputy Commissioner Gary Lanigan said that with the anticipated change in health provider, plans to move Dorm 4 would be delayed. He said it was important that the new vendor be comfortable with a change in location of Dorm 4 services. Regarding the VCBC, Mr. Marrero said that DOC had informed CHS of plans to reopen the VCBC by March 6th, but that the move was delayed at the last minute because issues arose concerning the provision of medical services. Mr. Marrero said he gave written assurances to DOC that CHS would provide medical services by March 13th, whether by St. Barnabas or by CHS personnel. He added that yesterday evening, the State Department of Health advised HHC that pursuant to Article 28 of the State Public Health Law, it will review staffing plans, policies and protocols, and must receive an assurance that the facility is a safe environment before State Health can "approve" the staffing of the VCBC. Mr. Marrero is seeking an expedited review so that VCBC can open on March 13th. BOC Deputy Executive Director Cathy Potler asked if there was a reason why the State Health Department was asserting Article 28 jurisdiction with respect to the VCBC. Mr. Marrero said he did not know. (Mr. Marrero left the meeting.) Mr. Wolf asked if DOC was required to obtain any approvals. Mr. Lanigan said that all approvals had been obtained. Mr. Wolf asked which inmates would be housed on the VCBC. Mr. Lanigan said that sentenced work cadre inmates will clean the facility, and that thereafter general population detainees will be housed there. He said that plans to convert VCBC to a mental observation facility are under consideration, but no final decision has been made. Mr. Wolf asked whether this plan might be affected by the announcement that a new correctional health vendor would be sought. Mr. Lanigan said that the conversion could occur within a few months of a final decision to do so. Mr. Lanigan added that the plan, if implemented, would result in one-half the facility housing general population detainees, and one-half housing mental observation inmates. Mr. Wolf asked whether the Mental Health Center, presently at Mod 1 of the Anna M. Kross Center, would move to the VCBC. Mr. Lanigan said that 100 beds will be retained at Mod 1 for new admissions and referrals to the VCBC, but the more intensive mental health services will be moved to the VCBC. He added that the VCBC is better suited for intensive mental health services and for access by community groups.

Mr. Horan asked for reports from the Members. Mr. Schulte reported that he and Mr. Horan toured the Mental Health/Punitive Segregation Unit at the George R. Vierno Center (GRVC). Mr. Schulte said the facility was very clean and orderly, and he praised the warden. Mr. Lanigan said that two populations are housed in the area - inmates from the Central Punitive Segregation Unit who are stable but have mental health symptoms, and inmates who committed infractions while in mental observation housing. Mr. Schulte raised a public safety question: whether DOC makes a notification of the status of an inmate coming to court from punitive segregation who has mental health problems. Mr. Lanigan said that no notification was made. Mr. Schulte said he was not simply referring to mental observation inmates, but rather dangerous inmates. He said that dangerousness should be reported for inclusion in an inmate's Probation Report. CHS Mental Health Director Arthur Lynch said that if an inmate has a clinical diagnosis of dangerousness towards himself or towards others, upon release the inmate is sent to the nearest psychiatric unit at Elmhurst Hospital for a civil commitment evaluation. Dr. Lynch said that two psychiatrists will evaluate the individual, and admit him against his will if they find him

to be dangerous. Mr. Schulte asked whether the judge before whom such individual is appearing for trial is made aware of his status. DOC General Counsel Elizabeth Loconsolo said that if a defendant seems, for mental health reasons, to be unable to proceed at trial, his defense attorney may make an application for a 730 mental competency evaluation. She noted that if DOC believes the individual could present a security risk in the court room, DOC would alert the court and recommend that the individual remain in restraints and/or security mitts in the court room.

Mrs. Margolis reported that the Horticultural Society, working with DOC staff and inmates, have created a "little piece of heaven" on Rikers Island, with a fountain and an herb garden. She said it is behind the Rose M. Singer Center, and she urged everyone to visit it. Mr. Horan asked if the training offered inmates a chance to find employment upon release from custody. Mrs. Margolis said she knew of numerous recent "success stories".

Mr. Wolf asked for the status of DOC's modular replacement project. Mr. Lanigan said that DOC is prepared to meet with the Board to share information about design plans which have just been completed for the first 448 beds of the 10-year, 5,000-bed project.

Mr. Wolf asked about the death in early February of an inmate from the Adolescent Reception and Detention Center (ARDC). He noted that at the Board's February meeting, Commission Kerik said the death had not yet been officially classified as a homicide. Mr. Lanigan said the incident was determined to be a homicide, and it is presently under investigation.

Mr. Wolf asked about DOC's plans to ban smoking in the jails. Ms. Loconsolo said DOC is awaiting further meetings with the Mayor's Office of Labor Relations and the unions to resume negotiations. Mr. Wolf asked whether DOC believed a ban would be implemented before the end of 2000. Ms. Loconsolo said she did not know. She noted that the Mayor's Office is addressing a number of new labor relations issues. She added that she was waiting for further meetings to be scheduled. Mr. Horan asked if there was pending litigation. Ms. Loconsolo said there is no major lawsuit pending, although there have been individual suits brought by both inmates and staff. Board Member Dr. Canute C. Bernard asked whether smoking is still considered a serious issue. Ms. Loconsolo said that it certainly is, noting however that the City has prevailed in those suits in which individuals have claimed damages resulting from exposure to second-hand smoke. Mr. Lanigan said that DOC supports a ban. He added that the Mayor's Office feels the unions are entitled to a collective bargaining process before a determination is made. Dr. Bernard reminded everyone that the issue has been unresolved for three or four years since he first raised it. He said that the parties should be engaged in implementation. Ms. Loconsolo said that the question was which policy should be implemented. Dale Wilker, an attorney with the Prisoners' Rights Project, said he understood that local law and City policy banned smoking in all public buildings and public work places. He said he did not understand why DOC is an exception. Ms. Loconsolo said that some provisions of the Clean Air Act allow smoking in some areas of public buildings, and this is one of the issues that is being discussed with the unions. She added that prior arbitration rulings require the City to negotiate smoking policies with the unions. Mr. Schulte suggested that each facility have a designated room for smokers.

Mr. Wolf said that the *New York Law Journal* reported that a Bronx judge ruled that a hearing should be conducted to determine whether state prisoners, serving up to the first six months of their sentences in City jails, were being denied opportunities to participate in programs that would improve their prospects for favorable consideration by the Parole Board because the programs available in State prisons were not available in the City's jails. Mr. Wolf noted that when the Board raised this issue with DOC a year ago, the Department said it was developing equivalent programs. He added that the complaints of 54 State prisoners were consolidated before Judge Price. Mr. Lanigan said the decision required the State to revise the criteria for prisoners who could begin serving State sentences in City jails, so that State prisoners now will be transferred to State prisons substantially in advance of appearances before the Parole Board. Mr. Wolf asked whether this meant that State prisoners with higher security classifications would now be housed in City jails than had been the case before the court decision. Mr. Lanigan said not necessarily. He added that if fewer eligible State prisoners were available, the number of State prisoners housed in City jails will decrease.

Assistant Chief William Hurley requested that the Board renew existing variances. A motion to do so passed unanimously. The meeting was then adjourned at 1:45 p.m..