

**NEW YORK CITY
BOARD OF CORRECTION**

December 9, 1998

MEMBERS PRESENT

John R. Horan, Acting Chair
Canute C. Bernard, M.D.
David Lenefsky
Barbara Margolis
Richard M. Nahman, O.S.A.

Excused absences were noted for Members Louis A. Cruz, Stanley Kreitman, and David A. Schulte.

DEPARTMENT OF CORRECTION

Bernard B. Kerik, Commissioner
Gary Lanigan, First Deputy Commissioner
Tom Antenen, Deputy Commissioner
Roger Jefferies, Deputy Commissioner
Elizabeth Loconsolo, Counsel
Roger Parris, Assistant Commissioner
William Frazier, Deputy Chief
Christy Sanchez, Assistant Chief
Ron Greenberg, Inspection and Compliance Division
Terry Brostowin, Inspection and Compliance Division
Corina Monzon

HEALTH AND HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Michael Tannenbaum, Assoc. Exec. Dir. for Administration
Arthur Lynch, Director, Mental Health
Linda Calzaretta, Director of Risk Management

OTHERS IN ATTENDANCE

Richard Colon, State Commission of Correction
Maddy deLone, Prisoners' Rights Project, Legal Aid Society
Katherine Finkelstein, *New York Observer*
Ari Finkelthal, Public
Eva Gobotnik, Researcher
Kevin Hanratty, City Comptroller
D. Katz, Public

Paul Layton, Esq.

J. Marden, Public

Michael Shnab, City Comptroller

Latonia Scott, Finance Division, City Council

David Waterbury, Esq.

Amy Webber, City Council

Dale Wilker, Esq., Prisoners' Rights Project, Legal Aid Society

At 1 p.m., Acting Chair John R. Horan announced that the Board would convene in executive session with representatives from the Department of Correction.

The public meeting of the Board began at 1:10 p.m.. Minutes from the Board's November 10, 1998 meeting were approved unanimously.

Acting Chair Horan commended Commissioner Kerik for further improving safety and security in the jails in 1998. He noted that violent incidents continued to decline. Acting Chair Horan then asked for Members' reports.

Board Member Father Richard Nahman reported that his meeting with several senior DOC managers, scheduled for November 16, was canceled. On December 4, Father Nahman, via fax to Assistant Chief Christy Sanchez, suggested that perhaps a meeting was unnecessary. He noted that he wished to speak freely with the DOC chaplains who interpreted a comment made by Assistant Commissioner McLeish as prohibiting them from doing so. Father Nahman noted that in conversations with First Deputy Commissioner Gary Lanigan and Assistant Chief Sanchez, both indicated that this was not DOC policy. Father Nahman suggested that a simple memorandum clarifying the issue for the chaplains might resolve the issue. Commissioner Kerik responded that a memo had been issued on December 8th, and that the matter was resolved.

Executive Director Richard Wolf presented the staff report. He noted that he had circulated to the Members copies of Commissioner Kerik's prepared remarks presented at the Council's hearing on the Mayor's Management Report. He said the remarks referred to planned reductions of meal relief officers. Noting that meal relief officers provide substitute staff coverage in housing areas when officers go to meal, Mr. Wolf asked whether the reductions resulted in a diminution of staff available to supervise inmates. Mr. Lanigan responded that Chief of Administration Sheila Vaughan determined that the reductions, in place since July 1998, have not affected inmate supervision by staff. Mr. Lanigan agreed with Mr. Wolf's statement that the position is no longer called "meal relief officer", but the task continues to be performed. Mr. Wolf then asked about the Office of Management and Budget's (OMB) planned reductions to the Department's fiscal year 1999 budget. Commissioner Kerik said DOC is required to respond to the target by December 21st, and the analysis and response has not been concluded.

Mr. Wolf said that two months ago, the Commissioner said DOC was concluding its evaluation of plans to implement a smoking ban in the jails. He asked for an update. Commissioner Kerik said that although the analysis was completed and a plan had been prepared, labor relations issues are pending at the Office of Labor Relations, and both OLR and the Law Department will have discussions with the unions. The Commissioner said that when the outstanding issues are resolved, he will provide a copy of the plan to the Board. He added that he will not know when the plan might be implemented until OLR resolves the labor issues. Father Nahman asked about the security implications of a smoking ban. Commissioner Kerik said that DOC surveyed jurisdictions across the country, and none reported any problems in moving to smoke-free environments.

Mr. Wolf asked about the status of discretionary adult education services. Mr. Lanigan reported that a \$1.3 million contract is now in place with LaGuardia College, and calls for services to 500-600 inmates per day. Currently GED courses, vocational training and adult education courses are being provided at the Rose M. Singer Center, the James A. Thomas Center, and the Correctional Institution for Men. Services will begin in January at all borough facilities, and also at the West Facility, the Anna M. Kross Center, the George R. Vierno Center, and the North Infirmery Command.

Deputy Executive Director Cathy Potler reported that on November 14, 1998 at 3:30 p.m., a 22-year-old male detainee was found hanging by a sheet from a vent on the cell wall. He had been in custody since October 18th. Commissioner Kerik said the matter was under investigation. Ms. Potler asked Arthur Lynch, Mental Health Director for Correctional Health Services, whether the decedent had had any interactions with correctional mental health providers. Mr. Lynch said he could not comment either, citing the ongoing investigation. Ms. Potler asked when the investigation would be concluded. Mr. Lynch said that a meeting was scheduled to review the investigation later in December. Mr. Wolf said the Board would raise the issue again at its January meeting.

Commissioner Kerik said he had been told that at the preceding Board meeting questions about the visiting process and medically-monitored officers working in the Visit Control Building has been raised. Mr. Wolf said that Board Member David Schulte had presented a report of his tour of the Visit Control Building. Commissioner Kerik reported that Mr. Lanigan had gone through the visit process as an "undercover visitor". Mr. Lanigan said that the medically-monitored officers he observed demonstrated an appropriate attitude towards visitors, as did other DOC staff. He added that Mr. Schulte's observation that these officers were unidentifiable as staff because they wore no identification or uniform, was correct. Mr. Lanigan said all staff are now required to wear identification cards. He further noted that Mr. Schulte's concern regarding the suspension of a visitor's right to visit an inmate - that when a visitor's rights to visit are rescinded, the information is not transmitted to other jails, and if an inmate is transferred, the banned visitor can visit the inmate at the new location - had been addressed by the Department. Lists of suspended visitors, maintained at the Visit Control Building, are now distributed to all jail visit houses twice each week.

The Members approved a motion to renew existing variances.

Acting Chair Horan began a discussion of correctional health issues by reporting on his visit to the nursery at the Rose M. Singer Center (RMSC). He said that his visit was prompted by Correctional Health Services' report that the nursery had been "enhanced" by St. Barnabas. He observed that there were only two infants in the nursery at the time of his visit, down from a monthly average of from approximately 10. He said that he doubted whether any enhancements had been made to the nursery, which is mandated by the State Correction Law. He said there were no additional personnel. Mr. Horan then reported that he visited the CHS office on a ferry. He said that he spoke with two pharmacists who said they are putting inmate pharmaceutical

records into computer data bases.

Board Member Dr. Canute Bernard then presented his report. He said communications between HHC and the Board needed to be improved. He said proper responses to the myriad complaints about health care will not be forthcoming if the person at HHC who is responsible for addressing them is placed in a defensive position, trying to "cover his back". Communications break down further, he noted, when the discussions occur in a public forum. He said that confidentiality issues might be addressed by having a medical director or head of nursing attend meetings at which individual charts are discussed with oversight representatives. Dr. Bernard reiterated that he would be willing to attend such meetings to help expedite answers to quality-of-care questions, but that he has not been asked to do so. He added that patients continue to "fall through the cracks" because they are not being given appropriate treatment in a timely fashion. He said that he was able to assist a physician with some individual inmate quality-of-care issues by discussing them as one physician to another, and that this was much more effective than attempting to address them in a "lay context" at a public meeting. Dr. Bernard said he was concerned that some criteria in the Minimum Standards might be outdated, as they were written in 1991. He then urged that efforts be made to increase the availability of jail providers to discuss individual cases with him when he tours the jail clinics, because that is the best way for him to learn about problems and to be able to propose solutions that will make lasting improvements to the delivery system.

Ms. Potler presented a report on behalf of David Schulte. She began by noting that at the November Board meeting, Mr. Lenefsky questioned CHS's assertion in its Interim Status Report that "six dialysis stations were established" by St. Barnabas, because everyone knew that the six dialysis units in operation at the Manhattan Detention Complex had been there for years, well before St. Barnabas took over the contract. Ms. Potler said that CHS had responded in writing to Mr. Horan, noting that a transcription error in the Interim Report resulted in the dialysis service being mis-identified as "established" when it should have read "enhanced". The letter explained that the enhancement was the addition of an evening-tour registered nurse, which "enabled both services (dialysis unit and clinic operations) to operate without competing demands". Ms. Potler said that on Thursday, Mr. Schulte, accompanied by Richard Wolf and her, visited the dialysis unit. Mr. Schulte and staff confirmed that it long has been the practice that dialysis is performed on the midnight tour - not on the evening tour as suggested by the letter. Dialysis services only are provided by a nurse with nephrology expertise and a technician. This has been the staffing of the dialysis unit for years. According to St. Barnabas staff with whom Mr. Schulte and BOC staff spoke, the evening-tour nurse who was added to the clinic has nothing to do with dialysis operations. Furthermore, the new nurse is not trained to do dialysis. Thus, Ms. Potler noted, Mr. Schulte and staff concluded that the representation in the November 13th CHS letter to Mr. Horan, that dialysis had been "enhanced", was false. Mr. Lynch said he would look into the situation, but that his understanding was that the situation was correctly presented in the letter. Michael Tannenbaum, CHS's Associate Executive Director for Administration, added that St. Barnabas had purchased three new dialysis chairs which would be compliant with "year 2000 hook-up". Ms. Potler said that Mr. Schulte was not shown new chairs. Mr. Tannenbaum

responded that he did not say the chairs had been installed. Mr. Wolf asked who from CHS looked at the dialysis operation and concluded that it had been enhanced by the evening-tour nurse. Mr. Lynch described the "process" as a "number of people" who were involved in gathering information for the Report, from St. Barnabas and from CHS. He said he would find out how the dialysis information was obtained.

Board Member David Lenefsky presented a report. He said he had four subject areas. First, Mr. Lenefsky noted that this was the second consecutive monthly meeting that Mr. Erazo had chosen not to attend. Mr. Lenefsky said he wanted to invite Mr. Erazo "back to the table". He said that the presence of the CHS Executive Director was important. Mr. Lenefsky said that Mr. Erazo's absence gives rise to an inference that he is without reasoned responses to the many issues raised by the Board.

Second, Mr. Lenefsky reviewed a list of documents requested, but not received, by the Board. He began with St. Barnabas planned monthly staffing schedules (required by contract section 3.7.1), by name, provider-type, specialty, clinic, and hours. Mr. Lenefsky said the request has been pending since March 1998. Noting that schedules must be submitted thirty days before the month begins, he asked if the schedule for January had been submitted. Mr. Tannenbaum said that all reports are sent by St. Barnabas as scheduled. Mr. Lenefsky asked if CHS had in its possession monthly planned assignment schedules from St. Barnabas. Mr. Tannenbaum said he believed so. He said he sees them, but is not involved in analyzing them. He estimated that each monthly proposed schedule was approximately 20 pages long. Mr. Lenefsky asked if there was any reason why CHS could not copy all 13 months' planned schedules and forward them to BOC within two weeks. Mr. Tannenbaum responded that CHS had raised with HHC Counsel what should be provided and the manner in which it should be provided. CHS is awaiting a response. Mr. Lenefsky said that for ten months he has asked for the documents, and at various BOC meetings was told by Mr. Erazo, Mr. Kaladjian or by Mr. Tannenbaum that the documents would be forthcoming. Mr. Lenefsky said that if BOC does not receive the documents within two weeks, he is prepared to draw the inference that they do not exist. Mr. Lenefsky asked to whom St. Barnabas sends the planned monthly schedules. Mr. Tannenbaum said that various St. Barnabas materials come into CHS' offices, and are then routed to whichever analyst is assigned to review them. Mr. Lenefsky asked about other requested CHS documentation - CHS's verification of St. Barnabas' planned staffing schedule. He reminded Mr. Tannenbaum that CHS had provided BOC with verification of nursing staff for 11 days in July, 1998. Mr. Lenefsky asked whether the St. Barnabas monthly schedules were verified by CHS. Mr. Tannenbaum said documentation of CHS's verification exists, and Mr. Lenefsky called for its production within two weeks. Mr. Lenefsky said that at last month's meeting, he had asked for documentation explaining CHS's verification staff. He explained that he made the request because at the October meeting, Mr. Erazo said that CHS nurses had reviewed 3,000 charts, and that when Mr. Schulte pressed the issue of the number of CHS staff, Mr. Erazo said that 60 nurses did the chart reviews. Mr. Lenefsky said that thereafter, in response to a question from Mr. Horan, Mr. Erazo said that there were 200 CHS staff monitors. Finally, Mr. Tannenbaum had said CHS had 10 "full-time equivalent" monitors. Mr. Lenefsky

called for a list of all CHS monitors, by name, title, length of service, and monitoring location and responsibilities. He added that the City Council had asked for the same information. Mr. Lenefsky raised a fourth documentation issue. He said that Appendix A to the St. Barnabas contract lists 35 outcomes, 24 of which require quarterly submissions by St. Barnabas to CHS. Mr. Tannenbaum said that CHS had received the submissions, for 29 expected outcomes. He added that CHS had received three submissions for the first three quarters of calendar year 1998. Mr. Lenefsky called for the production of the indicator submissions and CHS's verifications of them. Mr. Tannenbaum acknowledged that the CHS analyses had been reduced to writing. Mr. Lenefsky then asked about Mr. Erazo's legal analysis of the contract that concluded the contract was not a managed-care contract. Mr. Tannenbaum said he had seen a draft of the analysis, which is under HHC internal review. Mr. Lenefsky called for its production.

Third, Mr. Lenefsky directed those present to language in Executive Summary of CHS's Interim Status Report, issued on November 5, 1998. He read, "Additional service improvements include: ..." Mr. Lenefsky read from another section: "In addition several enhancements will be implemented in fiscal year 1999". Mr. Lenefsky said that any and all reasonable people reading the first statement would conclude that the items listed below the statements were improvements already made as of November 5, 1998. Similarly, he said, the second statement refers to enhancements that will be made next year. Mr. Lenefsky then directed those present to language below the first statement: "New sub-specialty clinics for urology, surgery, plastic surgery, and ENT. These services were previously provided off-site..." He said this page gives the clear impression that the four clinics were in operation on Rikers Island before November 5, 1998. Mr. Lenefsky said that was the unambiguous, purposeful intent of the authors of the document to distinguish between improvements that already had been implemented (including the sub-specialty clinics) and those enhancements planned for the future. Mr. Lenefsky said that because the impression created is so clear, he asked at the November Board meeting for any date from January 1, 1998 through November 5, 1998 that any of the four clinics operated on Rikers Island. He said there was no response, because none was in operation. Mr. Lenefsky added that the language in the Executive Summary creating the impression that the clinics were in operation was reproduced verbatim in the press release. Thus, the general public and the press were given the clear, unambiguous impression that as of November 5, the four specialty clinics were operating. Mr. Lenefsky noted that in a November 13th letter to Mr. Horan, Mr. Erazo wrote, on page 3, "CHS Response. The press release information was correct. Nowhere in the Report is it claimed that these specialty clinics are operative..." Mr. Lenefsky said that we all demand truthful, reliable, useful information from government. He said the statement in the letter is at best disingenuous. He described the statements as deceptive, deceitful and dishonest. Mr. Lenefsky then asked who drafted the language in the Interim Status Report concerning the sub-specialty clinics. Mr. Lynch said the Report was drafted between HHC and CHS, and that numerous people were involved. Mr. Lynch said he would get for Mr. Lenefsky the identities of the authors of the Executive Summary language regarding sub-specialty clinics. Both Mr. Lynch and Mr. Tannenbaum said they were involved in drafting the Report, but not in drafting the language regarding sub-specialty clinics. Mr. Lenefsky asked if any member of the drafting team raised concerns that the language was misleading. Mr. Lynch said no. Mr. Lenefsky noted that

at the recent City Council Health Committee hearing, which took place one and one-half weeks after the Interim Report and Erazo letter were issued, HHC President Dr. Marcos was clear that the sub-specialty clinics were not yet in operation. Mr. Lynch said that he did not agree with Mr. Lenefsky's interpretation that the Interim Report and press release created the impression that the clinics were operating. In response to a question from Lenefsky, Mr. Lynch and Mr. Tannenbaum said that to their knowledge no one from any outside office, organization or institution, other than representatives of HHC and CHS participated in the preparation of the Interim Report.

Fourth, Mr. Lenefsky noted that on November 17th BOC sent CHS a memorandum calling attention to the fact that at JATC on November 2 and November 17 inmates went to court without receiving medications. Dr. Van Dunn sent a memorandum indicating that he had looked into the matter, and that the BOC allegations were incorrect. Mr. Lenefsky asked that Cathy Potler be able to check the records with Dr. Dunn to confirm that all out-to-court inmates received medication. Dr. Dunn did not respond to an allegation that there was no pharmacist on duty at JATC on November 9th, because the pharmacist was on vacation. Mr. Lenefsky said that on November 13th, BOC sent a memo discussing the case of an inmate who twice had been scheduled for surgery which did not occur. Dr. Dunn informed BOC that the surgery occurred yesterday. Mr. Lenefsky expressed his gratitude. He invited Dr. Dunn to attend future meetings. Mr. Lenefsky then mentioned a November 23rd memo in which BOC discussed the case of an inmate who required a biopsy. Although the biopsy occurred 2 ½ months after it was ordered, Dr. Dunn wrote that it was "timely" even though Mr. Lenefsky noted that the patient was a Priority 1, meaning that the procedure should have occurred within two weeks. Finally, Mr. Lenefsky raised the issue of "overloads" - inmates who are brought to specialty clinics but are not seen. He said the issue was raised on August 24th, on September 23rd, and finally on November 24th. In a November 9 letter, CHS said the problem had been solved. Yet between November 10 and November 15, there were 15 additional overloads (12 podiatry, 3 optometry). Mr. Lynch responded that the inmates cited by Mr. Lenefsky were seen within appropriate time frames. He said CHS had developed a streamlined process for scheduling specialty clinic appointments. Mr. Lynch said that some of the overload problem had been attributable to inadequate clinic space, but the recent move of specialty clinics from JATC to GRVC resulted in substantial improvements. Of 547 scheduled appointments, 64 needed to be re-scheduled, but only one was an overload. Mr. Lenefsky said that the Board is very sympathetic to the difficult tasks facing St. Barnabas, and only insists that problems, once brought to St. Barnabas' and CHS's attention, be acknowledged and addressed. Mr. Lenefsky concluded by observing that communications between CHS and BOC had broken down almost completely, and it will not "get back on agenda" until BOC receives full documentation. He urged CHS to re-think taking a legal position that CHS need not provide documents to the Board. Mr. Lynch said that the response to the Board was neither dishonest nor disingenuous.

Acting Chair Horan adjourned the meeting at 2:20 p.m..