

**NEW YORK CITY
BOARD OF CORRECTION**

April 15, 1999

MEMBERS PRESENT

Canute C. Bernard, M.D.
Louis A. Cruz
David Lenefsky
Barbara A. Margolis
Richard M. Nahman, O.S.A.
David A. Schulte

Excused absences were noted for Acting Chair John Horan and Member Stanley Kreitman.

DEPARTMENT OF CORRECTION

Bernard B. Kerik, Commissioner
Tom Antenen, Deputy Commissioner
Roger Jefferies, Deputy Commissioner
Christy Sanchez, Assistant Chief
Elizabeth Loconsolo, Esq., General Counsel
Roger Parris, Assistant Commissioner
Ron Greenberg, Inspection and Compliance Division

HEALTH AND HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Michael Tannenbaum, Chief Operating Officer
Tania Gordon

OTHERS IN ATTENDANCE

Charles Davidson, DM & H
Maddy deLone, Prisoners' Rights Project, Legal Aid Society
Katherine E. Finkelstein, *New York Times*
Javier Gomez, *El Diario*
Tracie Lucas, State Commission of Correction
Ashley Normand
Lynn Schulman, Community Board #6
Nina Siegal, *New York Times*

Board Member David Lenefsky called the meeting to order at 1:05 p.m., noting that in his absence, Acting Chair John Horan asked Mr. Lenefsky to chair today's meeting. The minutes from the March 10, 1999 meeting were approved unanimously.

Mr. Lenefsky, citing intense media interest in racial and ethnic composition of the Police Department, reported that the Department of Correction has a very good record in this area. He noted that eight of ten New York City correction officers are Black or Hispanic, as are 13 of 22 wardens, and 513 of 899 captains.

Mr. Lenefsky said that the Second Circuit Court of Appeals had upheld legislation looking toward the termination of the consent decrees. He said he did not know whether the case would be heard by the Supreme Court. Mr. Lenefsky asked the DOC representatives what the effects on budget and operations would be if the consent decrees were to be terminated. General Counsel Elizabeth Loconsolo said the Department is reviewing the *Benjamin* decree and court orders. Ms. Loconsolo said that part of the process involves comparing *Benjamin* provisions with the Board's Minimum Standards and the State Commission of Correction's Standards, because the provisions of both sets of standards will remain in effect. Mr. Lenefsky said the Board was looking at the role the Standards will play in the "post-*Benjamin*" environment. Board Member David Schulte asked if it were premature for the Board to do a comprehensive analysis. Mr. Lenefsky said that it was.

Mr. Lenefsky said that the Department had issued a directive providing for \$5 disciplinary surcharges to be collected from inmates who are found guilty of Grade I and II infractions. Commissioner Bernard Kerik noted that in 1991 the State Department of Correctional Services implemented surcharges, which have survived court challenges. Disciplinary surcharges also have been implemented in other jurisdictions, including Wayne and Nassau counties. Commissioner Kerik said DOC began exacting surcharges in February. He said that Grade I offenses include setting fires, assaults with weapons, assaults causing injuries, bribery; Grade II includes possession, sale or exchange of unauthorized prescription drugs, misuse or destruction of City property, and impersonating another inmate. Mr. Schulte asked for the results thus far. The Commissioner said that at ARDC, there had been 62 determinations resulting in \$105 being collected and \$210 pending. Mr. Schulte asked if there had been repercussions from the inmates. Commissioner Kerik said there had been none. He noted that if an inmate does not have \$5 in his commissary account, the surcharge is not collected. However, if a subsequent deposit is made into the account, the \$5 is deducted. Deputy Executive Director Cathy Potler asked whether there had been a reduction in infractions as a result of the surcharges. Commissioner Kerik said it was too early to tell. Further, he noted that DOC has begun showing a four-minute orientation film to all newly-admitted inmates, which admonishes them that if they stab, slash or assault someone, or possess a weapon or other contraband, they will be re-arrested. Commissioner Kerik said the film also informs inmates about available programs, including education.

The Commissioner reported that in response to suggestions by Mr. Schulte, First Deputy

Commissioner Gary Lanigan met with the Criminal Justice Coordinator, who convened a meeting of representatives of all five District Attorneys, to explore ways in which information about inmates' institutional behavior might be used by prosecutors in criminal cases, and also by the Probation Department.

Mr. Lenefsky asked about DOC's proposed smoking ban. Commissioner Kerik said that many unions are involved, and discussions continue.

Mr. Lenefsky said that on March 11th, a shooting occurred in the James A. Thomas Center. He asked four questions: was it self-inflicted? how did the gun get onto Rikers Island? how did the gun get into JATC? is any disciplinary action planned? Commissioner Kerik said the shooting remained under investigation by DOC, and that Federal authorities were also investigating. He said that when he has more information, he will advise the Board in executive session. Mr. Lenefsky agreed.

Mr. Lenefsky said that as a result of a recent newspaper article, he visited, together with Executive Director Richard Wolf and Ms. Potler, the nursery at the Rose M. Singer Center (RMSC). Five female inmates were interviewed; four had given birth while confined, at Elmhurst Hospital. Thereafter, he toured Elmhurst and observed two inmates who had just delivered. Mr. Lenefsky said he spoke with one; the second was medicated and asleep. Although the *New York Times* article reported shackling during labor, which would be a violation *per se* of the Health Care Minimum Standards and would violate DOC's own rules, Mr. Lenefsky reported that none of the women said they were shackled during labor or delivery. However, post-delivery shackling is not a *per se* Standards violation so long as there is an articulable rationale for it. Mr. Lenefsky said that all five women at RMSC reported that they had been shackled post-delivery, although DOC records reveal that two were not shackled. Mr. Lenefsky noted that at Elmhurst, the sedated prisoner was not shackled, but the other prisoner was shackled. He added that he had discussed the issue with the Commissioner, and asked for comment. Commissioner Kerik said that post-delivery prisoners, absent a security risk, should not be shackled. He said a problem had been delays in the availability at Elmhurst of paperwork needed to determine the security risk posed by an inmate. He added that this problem has been addressed. Commissioner Kerik said that he had met with the Chief of Department who will implement a policy by which security-risk information will be included on each pregnant inmate's accompanying card. Commissioner Kerik reiterated that prisoners should not be, and are not shackled during labor or delivery. Ms. Potler asked who will make the post-delivery shackling decision. Commissioner Kerik said the Elmhurst command will make the decision, and that they now will have the necessary paperwork to do so. Mr. Lenefsky said that Elmhurst, lacking the paperwork, presumptively shackled post-delivery.

Noting that there was no reason to shackle pregnant women, Mr. Schulte reported on his tour of the North Infirmary Command's (NIC) protective custody unit which houses the adolescent accused of a homicide in the Adolescent Reception and Detention Center (ARDC). He described the area as a wire cage, and suggested to the Commissioner that female prisoners

who posed security risks could be housed inside a similar area. Mr. Lenefsky disagreed, noting that most women who have just delivered are very tired, and that an officer is posted outside the room, within twenty feet of the inmate. Board Member Louis Cruz said that, as far as the economics are concerned, Mr. Schulte's idea has some merit, particularly for high-security female prisoners.

Mr. Schulte continued his report. He said the NIC protective custody area was well-managed. Mr. Schulte noted that the caged area in which the adolescent was held contained two cells - one housed the accused, the other was unoccupied. Mr. Schulte said that the NIC elevator is operated by an officer who makes \$30,000 or more. He said that at some other institutions, civilians run the elevators and that DOC should explore using a civilian for this task.

Returning to the shackling issue, Ms. Potler said that if shackling is medically contraindicated, a form must be signed by a physician. She reported that Elmhurst uniformed staff reported that they are not presented with these forms, because it is too difficult to find the physician in the hospital. She suggested that DOC and HHC work together to ensure that shackling reviews by physicians be conducted, as required. Mr. Schulte added that he is totally opposed to any shackling of female prisoners in a hospital setting. Mr. Cruz agreed. He said that in the newspaper account, some inmates claimed they had been shackled during labor. He asked DOC if it disagreed with the report. Commissioner Kerik said he disagreed.

Board Member Dr. Canute Bernard said that he was even more concerned about the pre-pregnancy medical and "psychic" conditions of female inmates. He said that many cases "fall through the cracks", and inmates' pre-existing conditions are made worse during incarceration. Dr. Bernard noted that to him, shackling is a particularly troubling term - and practice. Mr. Lenefsky said that the Commissioner had said that post-delivery shackling policy is under review, looking towards a non-shackling presumption with a safety and security exception. The Commissioner said that this is the policy. He promised to brief the Board on newly-implemented procedures at next month's meeting. Dr. Bernard asked if procedures allowed for medical staff's input into shackling decisions, and the Commissioner said that they did. Mr. Schulte said that some inmates who come to Elmhurst to give birth are escape risks, and he asked why they must be shackled during delivery. He suggested they could give birth in a secure setting. Commissioner Kerik said the problem is that this is a hospital setting, not a secure prison ward. Mr. Schulte said there should be a secure prison ward for pregnant inmates.

Mr. Lenefsky asked if Members wished to raise additional correctional issues before turning to correctional health services. Mr. Cruz raised disciplinary fines. He said he had discussed the issue with a staff member, and concluded that it makes some sense as disciplinary tool. Mr. Cruz described a problem: he said that when a fine is to be collected, the inmate's entire account is frozen for a period of time, and the inmate has no access to any of the money in the account beyond the fine amount. Commissioner Kerik said that this was incorrect. Assistant Chief Robert Ortiz explained that when a decision to levy a fine is made, only funds sufficient to pay the fine are frozen - until the sixty-day time-to-appeal period expires. Thereafter, the funds

are deducted from the account. Mr. Cruz asked for comment from Carl Niles, Director of Field Operations. Mr. Niles said that previously there had been a problem, but that it had been resolved. He added that if a decision to fine is overturned, the money is returned to the inmate's account.

Existing variances were renewed without objection. Commissioner Kerik and some DOC staff left the meeting, and the Board turned to correctional health matters.

Dr. Bernard reported on his tour of RMSC on March 31st. A letter he sent to Dr. Van Dunn, HHC's Vice-President for Medical Affairs, was distributed. Dr. Bernard said he noted some areas of improvement, particularly that long delays in access to gynecology services had been reduced. He said that the on-site obstetrician is available, but that she would benefit by improved scheduling. Further, Dr. Bernard said that there is no back-up when the obstetrician is sick or on vacation. He added that a PA cannot replace an obstetrician, and that coverage should be improved. Dr. Bernard said that on-site services had reduced delays in access to service occasioned by transportation delays to the hospital. He added that DOC should improve the escorting of inmates, so that medical staff can render services in a more timely fashion. Dr. Bernard reiterated his view that a cooperative meeting attended by representatives of St. Barnabas, HHC and Dr. Bernard for the Board would be beneficial. He said that he observed an "edginess" on the part of professional staff in speaking with him as a member of the Board. He added that he had heard that providers who spoke with him were "given a hard time". Dr. Bernard said that if someone from St. Barnabas's management had accompanied him when he spoke with clinic providers, some problems could have been resolved immediately. He called for periodic meetings to discuss problems and develop solutions collaboratively.

Michael Tannenbaum, CHS's Chief Operating Officer, said that Dr. Bernard raised a number of valid points. Mr. Tannenbaum said that discussions "from the bottom up" were important so that problems could be identified and resolved, and that this should augment observing operations. He reported that since March 1st, St. Barnabas had credentialed sixteen practitioners - 12 medical and 4 mental health. Twelve have begun working, three in mental health. Mr. Tannenbaum said that CHS recognizes that there are problems at RMSC. He said CHS is monitoring "ever more aggressively", and working with St. Barnabas on issues that require immediate attention and remedies. He said St. Barnabas is about to hire a new OBGYN for RMSC. A new exam room will open on Monday, and equipment for two other examining rooms will be in place in two weeks. Staff will be increased once the equipment arrives. Mr. Tannenbaum said that corrective action plans for RMSC were requested from St. Barnabas. He said that CHS is reviewing them to see if they have been implemented. Mr. Tannenbaum reported that average aggregate patient waiting time to see a doctor at RMSC, based on DOC data, was 46 minutes in March. Nonetheless, he said that CHS is concerned about those patients who wait over three hours and is working to address those cases.

Dr. Bernard said that the PA who runs RMSC's clinic needs more support, an issue Dr. Bernard raised in his letter to Dr. Dunn. Mr. Lenefsky said that the levels of illness, both

physical and mental, are much higher among female inmates than males. He reported that he too toured RMSC and made similar observations regarding staff shortages. Mr. Lenefsky said that the clinic log book revealed that on Saturday, sick call concluded at 12:30 a.m. He urged CHS to continue to focus on RMSC so that sick call can conclude much earlier.

Ms. Potler raised another issue presented to Dr. Dunn by Dr. Bernard - the RMSC infirmary. She said that on the day of Dr. Bernard's visit, there were twelve women who were being maintained in general population because there was no space in the infirmary. Ms. Potler asked Mr. Tannenbaum to review the situation. She noted that, absent additional infirmary capacity, it might be appropriate to send the sickest infirmary patients to the hospital. Also, Ms. Potler said that escort officers have been a problem at RMSC. Dr. Bernard and Ms. Potler were told that inmates had been brought to the OBGYN waiting area at 7:30 a.m., even though they cannot be seen until two hours (or more) later. Dr. Bernard said that the OBGYN must review charts and make her area ready before she begins seeing patients. Ms. Potler said that eventually, inmates who must wait lengthy periods before being seen, return to their housing areas. On Tuesday, Mr. Lenefsky and Ms. Potler were told that an additional escort officer would be made available to deliver inmates for services at the scheduled time.

Mr. Lenefsky reported that on March 7th and on March 16th, two inmates in the mental observation unit (MOU) at the Otis Bantum Correctional Center (OBCC) attempted suicide by taking excess medication. He said such inmates are supposed to be observed ingesting the medication, so that hoarding does not occur. Mr. Tannenbaum said that CHS has told St. Barnabas that when an inmate poses a suicide risk, liquid medication should be given. He said CHS and St. Barnabas are working together towards a solution. Mr. Tannenbaum also noted that five protocols are being prepared regarding suicide issues. These include: suicide reporting, attempts to overdose, evaluating attempted suicides, suicide watches, and psychological autopsies. Mr. Schulte asked how many pills a doctor will dispense at one time to an inmate who is supposed to take several pills each day. Mr. Tannenbaum said he did not know. Ms. Potler said that in MOUs, directly-observed therapy is required. She asked whether any corrective action had been taken in the aftermath of these two incidents. Mr. Tannenbaum said he had received the Board's written concerns about this issue, and that he had written to Board staff that HHC's Vice-President for Medical Affairs was reviewing the issue and was preparing a detailed response. Mr. Lenefsky said that the Board was interested in there being a procedure with directives to St. Barnabas staff to implement directly-observed ingestion of medications. Dr. Bernard said that the issue has been studied extensively by pharmaceutical houses who have developed non-lethal substitute medications that address the same symptoms. Mr. Cruz reiterated his recommendation that Dr. Bernard be made part of an on-going consultative process by which he would meet each month with the Medical Directors of CHS and St. Barnabas. Mr. Lenefsky said the medication issue would be amenable to such a meeting. Mr. Schulte asked who would contact the pharmaceutical companies to identify solutions to the problems raised at today's meeting. Mr. Tannenbaum said CHS would do so, and agreed to consult with Dr. Bernard.

Describing Risk Management as the "front door" to examining issues of appropriateness of care, Mr. Lenefsky said that CHS's former Director of Risk Management is now performing the same function for St. Barnabas on Rikers Island. Mr. Tannenbaum said that this was the case. Noting that absent exemptions, the situation appeared to be a clear violation of City Charter chapter 68, section 2604(d), Mr. Lenefsky asked by what procedure this change was approved, whether by legal counsel at HHC or Corporation Counsel. He asked that Mr. Tannenbaum provide documentation to the Board of Correction. Mr. Cruz asked if the person in question had been a CHS staff person. Mr. Lenefsky said that was the case. Mr. Tannenbaum asked if Mr. Lenefsky was concerned that this situation was a breach of conflict of interest regulations by the individual or by the organization. Mr. Lenefsky responded "by everyone". Mr. Tannenbaum said the individual had responsibilities beyond risk management, including medical records. He said the person was aware of the vacancy at St. Barnabas, applied independently of CHS, presented papers to an internal HHC review committee, and received clearance from the committee. Mr. Lenefsky again asked for the documentation. He said he assumed a document existed which reviewed the facts and explained why this person who "*per se* violates" the Charter conflict-of-interest chapter, is allowed to do so. Mr. Tannenbaum believed the individual received a document from the committee, but CHS did not receive it. Mr. Lenefsky asked Mr. Tannenbaum to review records and provide BOC staff with documentation in anticipation of a further discussion at next month's Board meeting. Mr. Lenefsky said that he raised this matter in the context of repeated statements since March 1998, by many Board Members, that CHS is not doing its job of on-site monitoring of St. Barnabas. Mr. Lenefsky noted that he had been saying since March 1998 that there was, in essence, an "unholy alliance" between CHS and St. Barnabas. He said he was nonplused as to why CHS would "do this in this environment". Mr. Tannenbaum responded that CHS did not "do it" - the individual sought the position. Mr. Lenefsky responded that CHS allowed it to occur. Mr. Tannenbaum said that HHC's corporate structure approved, and this was acceptable to CHS. He added that in instances where CHS employees participated in a more direct way in vendor selection, they were not permitted to work for St. Barnabas. Mr. Lenefsky said that the issue here was that the individual was monitoring whether St. Barnabas was doing its job. Dr. Bernard said that it was possible to obtain an exemption if one has particular expertise. Mr. Lenefsky said the Board would review the documentation.

In response to questions from Mr. Lenefsky, Mr. Tannenbaum said CHS had not yet hired a Medical Director, Director of Clinic Field Monitoring, Director of Mental Health, or the analyst position for the Office of the Executive Director. The HIV Director has been identified and is being processed, and if not further delayed by a hiring "freeze", should begin work within a week or two. Mr. Tannenbaum said that a newly-hired senior analyst is working on contract processing. A senior consultant for MIS has been retained to compile data and create data bases. The Dental Director is now working full-time, and dental staff have been added to Rikers Island. A physician is the new Director of Risk Management.

Ms. Potler asked for a list of all staff who are performing monitoring duties, by name and position.

Ms. Potler stated that the Board's Health Care Minimum Standards require HHC and DOC (when appropriate) to have in the clinics, policies and procedures, as well as medical protocols, which are accessible to staff. She said two examples of topics to be covered are sick call procedures and quality assurance. Ms. Potler said the Board received these in May, 1998 and have been asking for months to receive updated policies, procedures and protocols. She said she was told that none had been updated, but that directives had been written whenever changes to prior practices had been implemented. Ms. Potler reported that she and Mr. Lenefsky recently toured the Rose M. Singer Center and were told by the Clinic Manager that the ratio of physicians' assistants to physicians was four-to-one, and that all PA chart notes had to be reviewed and co-signed by a physician. Ms. Potler said that when she asked to see the written policy or procedure, the Clinic Manager said that these requirements had been verbally presented by Central Office and were not in writing. Ms. Potler asked how a *per diem* clinician who was not part of the full-time staff would know of these policies and procedures, and said that written policies and procedures were required by the Standards. She asked for copies of all directives. Mr. Tannenbaum noted that St. Barnabas cannot institute a policy and procedure without HHC approval. He said once proposed, policies and procedures undergo an oftentimes slow review process, culminating in review and approval by the Vice President for Medical Affairs. Mr. Tannenbaum said that directives are written to cover the period between the development of an idea for a policy and procedure, and its formal implementation. He said directives are an effective "bridge". Mr. Tannenbaum said he had no problem providing the directives but that the Board's request for directives had not come to him. He said the directives were being prepared for transmittal to the Board, and would be provided soon.

Board Member Barbara Margolis suggested that anyone who was interested in the historical background of many of the issues discussed today should see the play *Not About Nightingales*. She said it was based on a true event in a Pennsylvania prison more than 50 years ago.

Mr. Schulte asked Mr. Tannenbaum how the doctors at Elmhurst Hospital permit shackling. Mr. Cruz said that based upon what he read in the newspapers, the problem seems to be with Elmhurst Hospital's administration because it is acceding to alleged DOC security protocols.

Mr. Lenefsky, noting the absence of a quorum, adjourned the meeting at 2:25 p.m.