

**NEW YORK CITY
BOARD OF CORRECTION**

April 11, 2000

MEMBERS PRESENT

John R. Horan, Acting Chair
Canute C. Bernard, M.D.
David Lenefsky
David A. Schulte

Excused absences were noted for Board Members Louis A. Cruz, Stanley Kreitman, Barbara A. Margolis, and Richard Nahman, O.S.A..

DEPARTMENT OF CORRECTION

Bernard B. Kerik, Commissioner
William Fraser, Chief of Department
Gary Lanigan, First Deputy Commissioner
Tom Antenen, Deputy Commissioner
Antonio Figueroa, Deputy Commissioner
Roger Jefferies, Deputy Commissioner
William Hurley, Assistant Chief
Joseph Guarino, Counsel's Office
John Picciano, Chief of Staff
Darryl Harrison, Captain
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
John Russell, Director of Inter-Governmental Relations

OTHERS IN ATTENDANCE

Tracie Lucas, State Commission of Correction

Acting Chair John R. Horan called the meeting to order at 1:00 p.m. Minutes from the March 9, 2000 meeting were approved unanimously.

Mr. Horan reported that the law firm of Paul, Weiss, Rifkind, Wharton & Garrison was providing *pro bono* legal assistance to the Board during its review of the Minimum Standards. He said that in several weeks the Board would contact the Department to seek its collaboration in the process. Mr. Horan asked for Members' reports.

Board Member David Schulte reported that he recently attending an Inmate Council meeting at the George R. Vierno Center (GRVC). He said that Warden Eastmond and Deputy Warden Squillante presided at the meeting, which was attended by approximately twenty inmate representatives. Mr. Schulte noted that Deputy Warden Squillante described a movable cart, upon which one may find information about various programs available at the facility, and complaint forms. Mr. Schulte said he thought this was a good idea because problems would be brought to the attention of the Warden more quickly, and would not "fester". Mr. Schulte said that many questions were raised at the meeting, including an inquiry as to whether a reading library could be established at GRVC. He suggested that perhaps a reading room could be established. Mr. Schulte mentioned that an inmate reported he had been sent to C-76 (Correctional Institution for Men) where he was told that he had to give a DNA sample. The inmate said he refused to provide a sample. Mr. Schulte asked for the legal basis for requiring the sample, and what action the Department takes when an inmate refuses to provide it.

Commissioner Bernard Kerik said that "program carts" were being put in place at all facilities to provide information and forms to inmates, on facility programs and service, and for social security cards and other documentation. Executive Director Richard Wolf said that the cart also enables inmates to fill out an interview slip and gain quicker access to services and programs. He added that the mobile program cart is brought to congregate areas, such as the recreation yard. Board Member David Lenefsky asked whether library books are available for inmates. Commissioner Kerik said inmates may possess books and magazines, but there is no reading library. He said that a reading library could create security problems because DOC staff would have to escort inmates to and from the library room. Chief of Department William Fraser said that contraband is often found in the bindings of books. Mr. Schulte suggested that some books could be circulated on the program cart, or space for reading books could be found in the law library.

Joseph Guarino, Deputy Counsel, reported that a State law enacted more than one year ago requires that defendants convicted of certain crimes must provide blood samples for a DNA state-wide data bank. He said that the Department of Criminal Justice Services in Albany informs DOC of the names of the affected inmates. A phlebotomist draws blood and the results are given to the data bank. Mr. Guarino said that failure to cooperate is a violation of the Inmate Rule Book and will result in an infraction, which may result in disciplinary action. He added that DOC will not forcibly take blood from an uncooperative inmate.

Mr. Schulte noted that an inmate asked about a rumor that there would be no health services in the jails because the contract with St. Barnabas had been canceled. He said that Mr. Wolf explained that there would be no interruption of medical services.

Board Member Dr. Canute C. Bernard expressed his concern to the Commissioner about DOC's difficulty in implementing a smoking ban in the jails. Commissioner Kerik said that the Office of Labor Relations is meeting with the unions to resolve collective bargaining issues. He said the matter is out of his hands. Dr. Bernard noted that the hazards of smoking and second-hand smoke are well-established. Mr. Lenefsky asked how many correction officers smoke. Commissioner Kerik said the numbers were decreasing, but he did not have specific data.

Mr. Schulte asked about press reports of a dispute regarding whether correction officers would continue to staff the pre-arraignment court pens. Commissioner Kerik said DOC personnel will continue to staff the court pens.

Acting Chair Horan asked about a decision by District Court Constance Baker Motley finding deficiencies in educational services on Rikers Island. Mr. Guarino said the problem was that classes were not being offered to all inmates above the age of 17. He said DOC's plan would be submitted tomorrow, and that Legal Aid had two months to respond. Mr. Guarino said that the City's plans covers the problems identified in the litigation, and the plan already has been implemented. Deputy Commissioner Roger Jeffries said DOC had been working with the Board of Education (BOE) for the past two years to offer educational opportunities to all eligible 18 to 21 year-old inmates at all Rikers Island facilities. Mr. Guarino added that the BOE will assume a larger role, taking over some services that had been provided under contract by John Jay. Mr. Wolf asked about access to special education services. Mr. Jeffries said the BOE will devise a plan to provide these services.

Mr. Wolf presented the staff report. He asked about hearings in the case of *Benjamin v. Kerik*. Mr. Guarino noted that hearings on four subjects had been completed: visits, restrictive housing, inmate correspondence and law library. He said briefs have been submitted and a decision is pending. Discovery is proceeding in anticipation of hearings on environmental issues, which are to begin on May 8th.

Mr. Wolf asked about the ARDC homicide. Commissioner Kerik said that the matter is under investigation by the Office of the Bronx District Attorney, and noted that the Inspector General asked Commissioner Kerik not to comment on the case.

Mr. Wolf asked for a report on video teleconferencing. First Deputy Commissioner Gary Lanigan said teleconferencing began in 1996 at the James A. Thomas Center (JATC). A second site now operates at the Rose M. Singer Center (RMSC). Some court appearances, attorney-client interviews, program interviews, and Probation interviews are conducted via teleconferencing. Approximately 310 interviews are conducted each month (15 per day). A new site has been constructed at the Anna M. Kross Center (AMKC), and interviews should begin

during the summer months. Off-Island sites are located at 345 Adams Street, Brooklyn (Probation interviews), and Brooklyn Supreme Court, where there are three locations, including a courtroom and a client interview room on the 5th floor and a drug treatment office on the 9th floor. Mr. Lanigan said DOC hopes to establish a teleconferencing center in ARDC by 2001. He said off-Island facilities will expand when Brooklyn Supreme Court moves to 330 Jay Street, where six courtrooms will be wired for teleconferencing. Mr. Lanigan said that the Office of Court Administration (OCA) is interested in expanding teleconferencing to other boroughs. He said that teleconferencing has not saved money, but it improves security because it eliminates the need to transport participating inmates to off-Island locations. In response to a question from Mr. Horan, Mr. Lanigan said that teleconferencing is used most frequently for attorney-client interviews. Mr. Schulte asked if inmate participation was voluntary. Commissioner Kerik said that it is voluntary, and that some initial inmate resistance, which he attributed to the inmates not understanding the technology, has been replaced by enthusiasm. Mr. Wolf asked if there were any legal prohibitions against the use of teleconferencing. Commissioner Kerik said it was being used for non-essential court conferencing, but noted that in other jurisdictions (including South Carolina and Georgia) it is used for other purposes, including trials.

Mr. Wolf asked the Department to present a report on its modular replacement project. Commissioner Kerik announced that the first construction phase - replacing 448 modular beds - will occur at GRVC, where DOC will build a new Central Punitive Segregation Unit (CPSU). He said that by limiting the amount of inmate movement and related staff-inmate interaction, DOC will reduce violence below its already-low levels. He noted that slashing and stabbing incidents were down 96% in CPSU and uses of force have been reduced by 80%. He said that CPSU inmates are prone to "acting out" against staff, and added that the new design will limit the opportunities for them to do so. Commissioner Kerik described plans for the new unit as follows: Inmates will have showers in their cells and an individual recreation area adjacent to the cell. The cells are approximately ninety square feet and ten feet high. They have two doors with windows: one opens onto an interior corridor of the building, the other opens onto the cell's individual outdoor recreation area, which is approximately five feet by eight feet. Natural light will come into the cell from the window in this door. An officers' "catwalk" enables staff to patrol the exteriors of the individual recreation areas. The new CPSU will consist of two 224-bed wings. Each will have four levels. Commissioner Kerik distributed design sketches and pictures. He said that DOC representatives visited New York State's maximum security unit at Southport and modified some of its features to meet DOC's needs. Deputy Commissioner Antonio Figueroa said that the project includes a support building where inmate visits will occur, where administrative functions will be housed, and where a new kitchen will be located. He said that the new CPSU will be part of the GRVC command, but it can be completely isolated from GRVC's main building in the event of a serious incident. Commissioner Kerik said that some new technologies may be utilized to prevent inmates from flooding their cells and to accomplish other objectives. Mr. Wolf asked when the new CPSU will be opened. Mr. Figueroa said that DOC expects to begin the project in January 2001. He said the project will take two years to complete. Commissioner Kerik said the new CPSU will replace the existing facility at OBCC, which will be converted to general population housing.

Mr. Schulte asked about DOC's progress in renovating JATC. Mr. Figueroa said that

there are several projects. He reported that the ceiling project is almost completed, and that a vendor has been selected for the major "facility upgrade" project, which will begin within six months. Commissioner Kerik said that because the inmate population is low, now is a good time to renovate the facility. He added that in the event of an emergency, JATC's capacity could be reopened.

Mr. Lenefsky turned to correctional health issues. He began by thanking CHS Executive Director Ernesto Marrero for his positive leadership. Mr. Lenefsky said he was concerned about the transition from St. Barnabas Hospital (SBH) to a new vendor. He said SBH had failed to meet 43% of the contract performance indicators for the first quarter of 1999. He said the Board had received information that staffing levels were becoming more problematic. Mr. Lenefsky asked what can be done to ensure that SBH adheres to its contractual obligations for the balance of the year. Mr. Marrero said that the performance indicators that were not met in the fourth quarter of 1998 are the same indicators that were not met in the third quarter of 1998. He said that this suggested that the anticipated end of the SBH contract was not a factor in performance during these periods. Mr. Marrero said that with a medical director and more monitoring staff, CHS is aware of performance indicator issues. He said that in some instances, the percentage by which SBH fails to meet an indicator is quite small. Nonetheless, Mr. Marrero said, CHS made a policy determination that all failures to meet indicator benchmarks are noted, irrespective of the extent of the failure. He said the Service Delivery Assessment Unit conducts on-site inspections and reviews at individual clinics, and informs the clinic manager and Mr. Marrero of its findings. Mr. Wolf asked if field monitors have assessed whether current conditions in the clinics are better, the same, or worse than conditions existing during the time periods already reviewed by CHS. Mr. Marrero said that the contract does not require specific staffing levels, but rather requires that SBH must provide quality care. He noted that SBH sent its employees a letter advising them to use accumulated leave time. He said that he and his staff had not seen any effect on care that is related to staffing issues, and that complaints have not increased recently. Mr. Marrero said that when care issues are raised with SBH, it has been responsive to CHS concerns. He noted that the Service Delivery Assessment Unit had recently completed a comprehensive inspection and survey of the Rose M. Singer Center, and that CHS will continue to be "pro-active". Mr. Marrero said that the contract provides for liquidated damages - but not strong sanctions - when performance indicators are not met. He said his only other option would be to declare SBH in "material default" and to terminate the contract thirty days thereafter. Mr. Marrero said a "dis-affiliation process" is beginning. Mr. Lenefsky asked if CHS is able to monitor conditions in the clinics on a daily basis. Mr. Marrero said he had at least one CHS staff person in each clinic each day. The Assessment Unit conducts targeted inspections, but is not a regular presence in each clinic. Nonetheless, Mr. Marrero said he feels CHS has enough "eyes and ears" in the facilities to know what is going on.

Mr. Lenefsky asked if there is an issue about monies being owed by CHS to Bellevue Hospital. Mr. Marrero said that there is, and that it involves millions of dollars. He said that some success had been achieved through mediation, but not complete success, and HHC is assessing what its next steps will be.

Mr. Lenefsky asked if the new RFP will have more clearly-defined staffing requirements

than did the previous RFP. Mr. Marrero said that the new RFP will not have a capitated-rate structure, but will require line-item budgets for each facility, as well as staffing proposals by facility, by tour. He said that all contractual obligations will have financial penalties associated with them, and that the penalties will increase geometrically for persistent violations. Deputy Executive Director Cathy Potler asked whether CHS anticipated that there will be a significant number of vendors who may wish to bid on the RFP. Mr. Marrero said it was difficult to tell. He said CHS obtained bidders' lists from several sources, and mailed the RFP to twelve to fifteen potential vendors. He added that a letter of announcement was sent to perhaps one hundred people, and that another dozen inquiries were received. Mr. Marrero said he would have a better idea about the likely number of bidders when potential vendors begin responding to the facility tour schedule, noting that one tour is mandatory for each potential bidder. He said that information about the RFP has been disseminated widely. Mr. Schulte asked what would happen if CHS could not find another vendor. Mr. Marrero said that CHS gave twelve-month notice in February. He said that this might enable CHS to require SBH to continue providing services through February 2001, although another interpretation could result in SBH being required to remain through August. Mr. Marrero said that responses to the RFP are due on May 18th, and at that time CHS will have a better sense of the likelihood that it will find a responsive and responsible vendor. He said that if no such vendor is found, CHS will have other options: it could negotiate with SBH as a sole-source contractor or CHS could provide the services itself. Mr. Schulte asked what Mr. Marrero would do if SBH reduced staffing so as to effect the quality of care. Mr. Lenefsky said that CHS would have to convince SBH that it was in its own self-interest to end its contractual relationship "gracefully".

Mr. Schulte asked if the Board was doing all that it could to protect against a serious diminution of care or its abrupt termination. Mr. Lenefsky said that the question was premature. Ms. Potler said that when staffing reductions cause sick call to extend until midnight or later, the effect is to reduce the number of inmates who will get to the clinic, and contribute to delays in inmates getting to off-Island specialty clinics. She said that BOC had reviewed cases in which a patient's access to specialty-clinic services far exceeded priority code time-limits established by SBH. Mr. Marrero said that the issue for him was whether the delay was attributable to staffing issues, and whether the delay represented a change from last year. He said that thus far, he had not seen evidence of deterioration.

Mr. Lenefsky thanked Michael Tannenbaum for arranging for Board Members soon to be able to observe the electronic medical records system on-site in a facility clinic.

Mr. Wolf noted that many of the concerns and observations that BOC had raised to Mr. Marrero's predecessors about SBH performance had been borne out by the CHS performance indicator evaluations. He added that it was not unfair to say that had CHS had the resources and the will to monitor earlier, then many of the problems would have been acknowledged sooner and addressed. Mr. Wolf asked if the recently opened clinic at the Vernon C. Bain Barge (VCBC) had been staffed with providers taken from clinics in other jails. Mr. Marrero said he was told that SBH intended to use the staff from JATC, which is closed for renovations. Mr. Wolf asked whether SBH intends to hire replacements for staff who follow the SBH directive and use their accumulated leave time before September. Mr. Marrero said he does not know, but

that he expects SBH will hire per diem staff or utilize staff from the Hospital. Ms. Potler said that if SBH providers use their accumulated leaves, many per diems will be needed, and they will lack orientation, training and experience working in correctional settings. Mr. Marrero said he expected to have more information at the Board's next meeting.

Assistant Chief William Hurley requested that the Board renew existing variances. A motion passed unanimously. The meeting was adjourned at 2:10 p.m.