

**NEW YORK CITY
BOARD OF CORRECTION**

March 13, 2008

MEMBERS PRESENT

Hildy J. Simmons, Chair
Michael J. Regan, Vice Chair
Stanley Kreitman
Richard M. Nahman, O.S.A.
Alexander Rovt
Milton L. Williams, Jr., Esq.

Excused absences noted for Board Members Rosemarie Maldonado, Esq. and Paul A. Vallone, Esq.

DEPARTMENT OF CORRECTION

Martin F. Horn, Commissioner
Carolyn Thomas, Chief of Department
Florence Hutner, Esq., General Counsel & Deputy Commissioner for Legal Matters
Stephen Morello, Deputy Commissioner, Public Information
Mark Cranston, Deputy Chief of Staff/Commanding Officer, Office of Policy & Compliance
Ronald Greenberg, Director of Inspections, Office of Policy & Compliance (OPC)

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Thomas R. Frieden, MD, MPH, Commissioner
Louise Cohen, Deputy Commissioner
Jason Hershberger, M.D., Assistant Commissioner, Correctional Health Services (CHS)
Robert Berding, Exec. Director, Bureau of Regulatory Compliance and Outcome, CHS
George Axelrod, Esq., Director of Risk Management, CHS
Charles Luther, M.D., Executive Director for Mental Health, CHS
Sarah Markt, Deputy Press Secretary
Vivian Toan, Counsel, CHS
Julian Yuen, Office of Vital Records
Donald Doherty, Division Vice President, Prison Health Services (PHS)
Trevor Parks, M.D., Medical Director, PHS

OTHERS IN ATTENDANCE

Harold Appel, M.D., Contract Administrator, Doctors' Council, SEIU
John Boston, Esq., Legal Aid Society, Prisoners' Rights Project
Mara Cruz, Urban Justice Center (UJC), Mental Health Project, Brad H. Advocate
Narda Hall, New York City Council (NYCC)
Jennifer Parish, Esq., Director, Criminal Justice Advocacy, UJC Mental Health Project
Tim Rudd, Analyst, Office of Management and Budget
Anne Underwood, Newsweek
Eisha Williams, Legislative Financial Analyst, NYCC
Milton Zelermyer, Esq., Legal Aid Society, Prisoners' Rights Project

Chair Hildy Simmons called the meeting to order at 9:31 a.m. A motion to approve minutes of the February 14, 2008 Board of Correction meeting was approved without opposition.

Chair Simmons announced Dr. Gwen Zornberg's resignation from the Board, and praised her hard work, dedication and significant contributions to the Board.

Chair Simmons reported that the Law Department has given its verbal approval of the Board's proposed amendments to the Minimum Standards, and expects final written approval within a few days. Ms. Simmons stated that the printed version being prepared by the Law Department will take a bit longer due to "interagency formatting compatibility" problems. The Chair explained the process: once the Law Department completes its version, Board staff will do a final review, the approved version will be published in the City Record, and thirty days after publication, the rule will take affect. Chair Simmons thanked the Board members and staff, DOC officials and members of the advocacy community for their hard work.

Chair Simmons announced that the April Board meeting would be canceled because of Board members' travel schedules and religious holidays, making it unlikely that a quorum could be achieved. However over the next six weeks, Chair Simmons announced that Executive Director Richard Wolf and Deputy Executive Cathy Potler, along with Commissioner Horn's designee Chief of Staff Mark Cranston and Board Members Stanley Kreitman and Milton Williams would develop a process to ensure that the implementation of the amendments be as smooth as possible and to report on their progress at the next Board meeting. Board Member Michael Regan asked if this process would also include the promulgation of DOC's procedures and protocols. Chair Simmons responded affirmatively.

Chair Simmons discussed the Petition for Rulemaking received from the Legal Aid Society's Prisoners' Rights Project. She explained that this petition requests that the Board promulgate procedures for submission, consideration and disposition of petitions for rulemaking. She thanked the Prisoners' Rights Project for bringing to the Board's attention the Charter requirement that every City agency adopt formal procedural rules for handling receipt of petitions seeking agency rulemaking. She described research conducted at her request by Mr. Wolf, which revealed that many City agencies do not have such a rule and in some cases were not aware of the Charter requirement. The Chair suggested that the Board initiate the process of implementing the requisite rule and that Mr. Wolf draft language, which the Members would review prior to the May Board meeting. Chair Simmons stated that the only task for the Board Members at the instant meeting is to entertain a motion to pass a resolution supporting development of the required regulation. She proposed the following language: "Resolved that, pursuant to Section 1043(f) of the City Charter, the Board of Correction will initiate rulemaking to establish procedures for the submission, consideration and disposition of petitions for rules." Board Members voted unanimously in favor of this motion. Mr. Wolf explained that once the Board formally initiates the rulemaking process, the same steps apply as set forth in the City Administrative Procedure Act (CAPA), which guided the process for promulgating amendments to the Standards. He noted that the process would proceed much quicker.

Chair Simmons introduced Health Commissioner Thomas Frieden, who she invited to update the Board on the Department of Health and Mental Hygiene's (DOHMH) progress in service provision, performance indicators, and electronic record-keeping. Commissioner Frieden responded that he would provide both an overview of his agency and a description of new

activities by using a PowerPoint presentation (a copy of which is attached). Dr. Frieden emphasized that his agency's mission is to protect the public health of all New Yorkers and that this includes the proper provision of correctional health care and related discharge planning. He reported that DOHMH identified three problem areas prevalent among the inmate population to focus upon: HIV/AIDS, mental health and chemical dependency. He added that he also expanded the focus of correctional health care by targeting ailments common in the community and among the inmates, such as asthma and communicable diseases, and increasing vaccination programs for inmates.

Providing a historical perspective, Commissioner Frieden explained that in July 2003, DOHMH took back from the Health and Hospitals Corporation (HHC) the authority for direct, intensive oversight of City contracts for correctional health care. He added that he established a Quality Improvement Executive Council and re-established a Bureau of Correctional Health Services (CHS) to improve accountability, coordination and monitoring of health and mental health care. From 2000 to the present, Dr. Frieden said that despite his personal outreach to several providers to encourage them to respond to the Request for Proposal (RFP) to provide health care in the City's jail system, no local provider responded. In 2007 he said that DOHMH issued a concept paper, followed by an RFP inviting bids for a provider to service only one jail facility, rather than the entire system. Again, despite his outreach to local entities, Dr. Frieden said that no bids were submitted.

Dr. Frieden discussed the immense value of the electronic health record system in maintaining consistency of treatment and information about each inmate, and in promptly assessing their medical needs should they return to DOC custody. As a public health benefit, former inmates will be able to obtain in City hospitals access to testing and treatment information from their City jail medical records.

Mr. Regan asked if the intake statistics on sexually-transmitted diseases (STDs), particularly those presented from a pilot project with male inmates, are similar to those in City hospitals. Commissioner Frieden responded that the numbers in his PowerPoint presentation are much higher than all City STD clinics combined, and nearly as many as the entire rest of the City's out-care system. He described new testing procedures being used during intake, and the STD follow-up procedures instituted for inmates discharged from custody prior to treatment or completion of treatment, including letters to home addresses identifying nearby clinics.

Commissioner Frieden discussed the substance abuse treatment programs provided by DOHMH, which include detoxification services, counseling, methadone and referral to residential outpatient treatment. Dr. Frieden reported that DOHMH is accredited for its opiate treatment program, which is the only such jail-based program in the United States.

With respect to mental health services, Dr. Frieden stated that the City was moving away from the concept of jails simply providing custodial care. Dr. Frieden referred to the mental health population as a priority population in the jails and community. Because mental health inmates are a "captive audience", he added that the City has an opportunity to address the behavioral aspects of their mental illness. DOHMH Assistant Commissioner Jason Hershberger reported that approximately one-quarter of all inmates on Rikers Island is receiving some type of mental health service and of those, one-quarter require a much higher level of mental health care.

Commissioner Horn noted that improvements in the quality of care in DOC mental health units are dramatic.

Mr. Kreitman acknowledged that the improvement in DOHMH work is vast, but expressed concern about the health care contractors. Deputy Commissioner Louise Cohen responded that there is 200 staff assigned to the jails, many of whom are nurses, who review 10,000 medical records on a quarterly basis, and conducts a series of quality-improvement activities on an ongoing basis in every facility. Board Member Alexander Rovt requested a breakdown of DOHMH's Correctional Health Services staff assigned to evaluate and monitor the performance of contracted medical providers. Ms. Cohen stated that she will provide this information to the Board. Ms. Cohen further explained that the Department also employs discharge planners, some of whom are social workers with clinical degrees. She stated that there are approximately 1000 staff working daily in the jails and that the Board should be assured that there are high-level, highly-skilled administrators on-site evaluating performance.

Dr. Frieden discussed another key initiative – specialized discharge planning. He explained the importance of linking discharged inmates to the appropriate services in the community. He described the continuous challenge of selecting appropriate mental health and chemical dependency treatment in the community for former inmates, getting them to begin treatment, and then remain in treatment.

Board Member Michael Regan asked Dr. Frieden's if the renewal of the PHS contract meant that the vendor was highly regarded by the Department. Commissioner Frieden responded that he preferred the renewal option to any other option available.

Mr. Regan expressed his desire to more regularly review health delivery performance measures. Chair Simmons proposed that Commissioner Frieden and the Board mutually agree upon the most important indicators to review and that DOHMH regularly forward this information to the Board. Commissioner Frieden suggested that his staff select two or three core service areas in need of extensive improvement and regularly forward to the Board materials about these areas and discuss with the Board DOHMH activities and progress made in addressing these areas. He added that, in his position as Chair of the Quality Assurance Committee for public hospitals, he found it frustrating to expend time and energy on seeking 100% performance rates in areas where performance is at a reasonable level, while in other areas performance is poor. Dr. Frieden stated that more focus should be given to improving poor performance areas than to raising an indicator rate from 95% to 100%.

Commissioner Frieden stated that many aspects of providing health care in a jail-setting are counter-intuitive. He noted that providers may only be able to identify problems and establish a long-term treatment plan rather than cure an ailment. He offered as an example the fact that it often is not a top priority to get a diabetic patient's blood sugar to a perfect level when he/she will only be your patient for a few weeks; instead, what is important is to educate the patient about his/her illness and to make sure that outpatient treatment is arranged prior to the inmate's jail discharge.

Chair Hildy Simmons recommended that DOHMH come back to the Board by the May meeting with an initial set of priority areas, that Board staff could identify other areas to include, and then use this as a basis for discussion with Deputy Commissioner Cohen.

Board Member Richard Nahman asked if DOHMH would be submitting a new tuberculosis protocol. Dr. Frieden responded that DOHMH did not implement the variance request submitted to the Board last year because the tuberculosis screening procedures did not reflect an appropriate approach, but he has been unable to devise a better approach for a jail setting. He noted that DOHMH continues to identify large numbers of New Yorkers with tuberculosis infection or at risk of becoming sick in the future, but relatively few who are sick and even fewer with active disease.

Ms. Potler asked how DOHMH identifies inmates with HIV, and given that 5% of the inmate population is positive (PowerPoint presentation), what percentage were found to be HIV+ upon admission to DOC custody. Commissioner Frieden responded that there are three different HIV+ populations: inmates who self-identify their HIV status, inmates who are HIV+ but do not report it, and inmates who do not know their status. He described a recently completed remnant serum survey to determine the rate of positivity and matched the results with people who self-reported as being HIV+. He said that the study showed that inmates who tested positive, but had not been previously diagnosed, were most likely to refuse to be tested. Dr. Frieden stated that the Department is trying to figure out how to do a better job of encouraging inmates to be tested and getting them into care. He added that HIV treatment experts have emphasized that there is a medical risk in starting a new regimen of HIV medications on patients who will be in jail for only one or two weeks. Ms. Potler inquired as to the results of the sero-prevalence HIV survey. Commissioner Frieden responded that the results are not final, but the rate of positivity was lower than when last checked in 1999.

Chair Simmons ask when implementation of the electronic health record system would be completed. Dr. Frieden responded that he hopes it will be implemented system-wide in this calendar year. Deputy Commissioner Cohen said that it will be implemented in at least two more jails by the end of the calendar year. Chair Simmons requested that the Board receive quarterly status reports on the implementation of the medical record system. The Board Members thanked Dr. Frieden for his presentation and for being so forthcoming and cooperative.

Commissioner Horn reported that he has been enmeshed in budget negotiations. He stated that DOC had not met the targeted budget cuts established by the Mayor's Office for the Fiscal 2009 Preliminary Budget, but had won approval by the Office of Management and Budget (OMB) to forego the cuts because of their potentially detrimental effect on safety and security within the jails and on its discharge planning efforts. The Commissioner discussed how DOC will implement the budget cuts recently proposed emphasizing that there will be no cuts in jail-based uniformed staffing involving inmates, although richly-staffed unit management housing areas will be cut back and that cuts will be taken at headquarters, where some uniformed positions will be civilianized and some positions consolidated. He reported that OMB will request additional cuts in the coming weeks.

Commissioner Horn reported on the status of the expansion of the Brooklyn Detention Center. He stated that the jail would reopen with an additional 720 dormitory beds, yielding a total of 1520 beds, and that retail space will be available on the street level. The Commissioner said that the Department withdrew its interest in the Oak Point, Bronx site, but asserted that it is in the City's best interest to have a new jail in the Bronx and that DOC will continue to search for an appropriate site. Commissioner Horn emphasized that despite the Department's

construction plans, the total number of jail beds ultimately will be reduced by 4000 on Rikers Island. He explained that the Department is committed to demolishing modular and sprung dormitories on Rikers Island.

Chair Simmons announced that this will be the penultimate time for the Department to request renewal of variances from the Board's existing Minimum Standards. Chief of Department Carolyn Thomas requested that all variances be renewed. A motion by Board Members to renew all existing variances was approved without opposition.

Father Nahman asked about the status of research on prison rape that Commissioner Horn had reported last year was being done by the Department in conjunction with the Prison Rape Elimination Act. Commissioner Horn explained that this study was mandated by a federal statute requiring that the federal government research the prevalence of rape in prisons and jails around the country. The Commissioner explained that DOC had participated in the study, but thus far only results on state prisons have been published.

Father Nahman commented to the other Board Members that, during the extensive public promulgation process to amend the Standards, the Board received written and oral input and proposals for the development of new standards and additional amendments to existing standards. He noted that the Members have never discussed any of these proposals. He urged that the Board give serious consideration to all suggestions previously submitted.

Chair Simmons responded that the Board had, in fact, discussed that it would be counter-productive to delay the progress of the draft amended standards in order to begin a fresh review of newly submitted public proposals. She noted that the Board had discussed the advisability of finalizing the original changes proposed and approved by the Board, of monitoring DOC's implementation of the amended standards, and awaiting stabilization in the jails, prior to the Board and its staff getting involved in the research and development of additional amendments. She projected finalization of the promulgation process to be in May. Chair Simmons noted that in the interim the Board will adopt official procedures for handling formal petitions for new or amended standards. She noted that some of the proposals submitted by the public could be considered in the future, but that many might not be appropriate for consideration because they pertain to DOC policy. Mr. Regan said that he concurred with Chair Simmons that the Board did speak about finishing the development and promulgation process before beginning another. He added that the Board Members did speak about the need for an organized, slow process in implementing the massive amendments already passed.

Mr. Kreitman said that he is concerned about medical discharge planning for inmates with medical conditions such as tuberculosis and diabetes, and suggested that DOHMH provide health education materials on a compact disc in English and in Spanish for inmates upon discharge. Commissioner Frieden responded that a variety of materials are given to the inmates upon discharge. Deputy Commissioner Cohen added that the electronic health record system includes a section for staff to print out materials to give to patients about their history and treatment. She explained that staff conducts discharge planning groups for inmates with HIV and other chronic diseases to educate them about their medical conditions and treatment options.

The meeting was adjourned at 10:28 a.m.