

**NEW YORK CITY
BOARD OF CORRECTION**

November 9, 2006

MEMBERS PRESENT

Michael J. Regan, Vice Chair
Stanley Kreitman
Rosemarie Maldonado, Esq.
Richard Nahman, O.S.A.
Paul A. Vallone, Esq.
Milton L. Williams, Jr., Esq.
Gwen Zornberg, M.D.

Excused absences were noted for Chair Hildy J. Simmons and Member Alexander Rovt.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Florence Hutner, General Counsel
Judith LaPook, Chief of Staff
Mark Cranston, Commanding Officer, Office of Policy and Compliance (OPC)
Ronald Greenberg, Director, OPC
Danielle Leidner, Special Assistant Counsel

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Louise Cohen, Deputy Commissioner
Jason Hershberger, M.D., Assistant Commissioner, Correctional Health Services (CHS)
Robert Berding, Director, Clinical Services, CHS
Maria Gbur, M.D., Medical Director, CHS
George Axelrod, Director of Risk Management, CHS

OTHERS IN ATTENDANCE

Harold Appel, M.D., Contract Administrator, Doctors Council
John Boston, Esq., Project Director, Legal Aid Society, Prisoners' Rights Project (PRP)
Rebecca Brown, Policy Analyst, Innocence Project
Donald Doherty, Division Vice President, Prison Health Services (PHS)
Carole Eady, Board member, Center for Community Alternatives
Chi Lam Fu, Pharmacy Specialist, PHS
Linda Glover, HIV Counselor, PHS
Martha Kashickey, Public Education Associate, Innocence Project
Amanda Lockshin, Legal Aid Society
Megan McLemore, Researcher, Human Rights Watch
Geraldina Mitton, Organizer, 1199, Service Employees International Union
Trevor Parks, M.D., Medical Director, PHS Medical, P.C.

DeAvery Toms, Correctional Association
Mindy Venetek, HIV Counselor, PHS
Jennine Ventura, Legislative Policy Analyst, City Council
Karen M. Visnauskas, OMD
Dale Wilker, Esq., PRP
Eisha Williams, Legislative Financial Analyst, City Council
Milton Zelermyer, Esq., PRP

Vice Chair Michael Regan called the meeting to order at 9:35 a.m. A motion to approve minutes of the October 5, 2006 Board of Correction meeting was approved without opposition.

Member Gwen Zornberg, M.D., chair of the Health Committee, asked representatives from the Department of Health and Mental Hygiene to report on progress towards developing electronic medical records and other current issues, including staffing. DOHMH Deputy Commissioner Louise Cohen presented a report, as follows:

Acting Assistant Commissioner Dr. Jason Hershberger is now Assistant Commissioner for Correctional Health Services. The Health Department has asked its vendor, Prison Health Services (PHS), to move to a new model of HIV testing to make the Department's HIV continuing care program more robust. Over the past few years, DOHMH has increased rapid HIV testing on a voluntary basis, particularly at intake but also at other times when inmates have medical encounters. Rapid testing began in March 2004, when 5,000 tests per year were performed. Now, almost 30,000 tests are conducted each year, with approximately 2/3 at intake. DOHMH is committed to reaching even more inmates with the HIV rapid testing program, so at each medical encounter an inmate without a documented status will be offered an HIV test.

Two years ago DOHMH went from a model using dedicated HIV counselors to one in which nurses and patient care associates (PCAs) provide HIV testing as part of their work. DOHMH is continuing along this path by asking PHS to create four new PCA positions and to eliminate the eight HIV counselor positions. All of these individuals will be offered other positions. The goal is for everyone to know their HIV status. Another important goal is to improve the quality of treatment for inmates known to be HIV+. DOHMH has hired a new HIV Services Director, Dr. Rebecca Finn. There are approximately 25 DOHMH staff dedicated to HIV services on Rikers Island. Finally, DOHMH is working to improve discharge planning for people with HIV and AIDS. Currently, discharge planners do not see everyone who has HIV, and this is wrong. Thus, DOHMH is trying to improve the diagnosis, management and discharge planning for people with HIV.

DOHMH remains in negotiations with its electronic medical records vendor. The contract should be signed by January 1st. Development will take place through July, and some implementation, including chronic care and follow-ups, should occur over the coming summer. Mental health records will follow thereafter, with six-month development cycles for each phase. The process should take approximately two years. Also, pursuant to the *Brad H.* stipulation, DOHMH's new electronic case management system to address mental health discharge planning will begin to be piloted in the next month or so. The system will help to eliminate gaps in service, and track how inmates respond to services.

Dr. Zornberg asked for information regarding medical and mental health care staffing issues on Rikers Island. Dr. Hershberger said that DOHMH manages a budget that controls the staffing matrix of all medical and mental health staff on the Island. He said DOHMH constantly reviews the needs of each facility. He noted that staffing levels are adequate, but there are areas that DOHMH would like to improve. Dr. Zornberg asked which matrix DOHMH uses. Dr. Hershberger said it is a document, part of the contract with PHS, that lists how many of each provider group is working on each tour. He said DOHMH constantly reviews the matrix, and is proposing new needs for additional staffing in January. Board Member Paul Vallone asked for clarification of the plan to eliminate the HIV counselors and what the new positions will be, given that demand has increased five-fold. Dr. Hershberger reiterated that there has been a dramatic increase in the number of tests that are provided, and DOHMH is working to make HIV testing part of routine medical care. He said this will be accomplished not by a special cadre of HIV counselors, but by all providers including doctors, nurses, and PCAs. Mr. Vallone observed that the providers will be doing other things in addition to HIV counseling and testing. Dr. Hershberger agreed. Mr. Regan said it seems to him that Dr. Frieden has been a leader on this issue, but if the Department is going to be spending so much time on this important issue, to reduce the positions of people who are “on the ground” and to instead have people who have other responsibilities take on these tasks seems contrary. Board Member Rosemarie Maldonado asked for an explanation of the functions of the HIV counselors, and how DOHMH plans to cover each function. Ms. Cohen said that in the past, new-admission inmates were not asked if they wanted HIV tests. She said that HIV tests are now part of the general flow of intake. She noted that in March 2004, before rapid testing began, there were 17 HIV counselors who performed 5,000 tests. Ms. Cohen said there are now 12 counselors and DOHMH has conducted 30,000 tests. She added that the testing function no longer is tied to an individual, and she believes that having positions that only perform HIV testing is not efficient. She said that everyone in custody should be assumed to either have HIV or be at-risk for HIV, and all doctors, nurses and PCAs must know how to approach this very important issue. Ms. Maldonado asked if counseling HIV positive inmates is the primary function of the HIV counselors. Ms. Cohen said the primary function is doing testing. She said no counselors do HIV testing at intake, when the bulk of the testing is performed. She said that if an inmate wants an HIV test post-intake, the inmate would be scheduled to see an HIV counselor. Ms. Cohen said DOHMH wants all providers at every encounter to offer HIV tests to inmates whose status is not documented, and to offer the test at that time, rather than have to schedule an appointment with an HIV counselor. She said that DOHMH staff will be performing post-test counseling for all inmates who test positive, and that thereafter treatment and case management will be provided for the balance of the inmate’s stay. Mr. Vallone asked if these were tasks for the HIV counselors. Dr. Hershberger said that the discharge planning “piece” is in place, adding that the plan is to have all providers involved in HIV care. He said the four new PCAs will handle the burden of the post-intake tests. BOC Executive Director Richard Wolf asked if Dr. Hershberger is saying that four PCAs will take on the responsibilities for the non-new-admission testing, which was being handled by eleven HIV counselors. Ms. Cohen said the point is that additional staff is needed to make sure that when an inmate comes into a clinic and says he wants an HIV test, that he will get one from any PCA or nurse who is on duty at that time. She

said the PCAs will be additional staff to provide the coverage, noting that DOHMH is using a different model. Mr. Wolf asked if DOHMH tracks the numbers of HIV tests, and pre- and post-test counseling done at intake, as opposed to those done post-intake. Dr. Hershberger said yes. Mr. Wolf asked for the data, and Dr. Hershberger said he would provide it. Ms. Maldonado asked for the qualifications of HIV counselors. Dr. Hershberger said they usually have B.A. degrees but do not have clinical licenses. Ms. Maldonado asked if they draw bloods. Dr. Hershberger said they do, and also perform pre- and post-test counseling. Dr. Zornberg asked what characteristics DOHMH looks for when it hires PCAs. Dr. Hershberger said the Department looks for someone who can work with nurses and patients, helping people through the system. Ms. Maldonado asked if the PCAs are nurses. Dr. Hershberger said they are not. He said he thinks they have bachelor's degrees. Board Member Father Richard Nahman, O.S.A. asked whether someone who has been diagnosed with AIDS requires someone with more than a bachelor's degree to diagnose and treat them. Dr. Hershberger said yes, noting that testing is done by PCAs, much as an EKG is performed by a PCA. He said test results are communicated to the patient by a medical professional – a doctor or a nurse. Father Nahman asked about post-test counseling. Dr. Hershberger said this is part of the chronic care, which is done by doctors and nurses. He added that discharge planning is done by social work staff. Mr. Vallone asked how DOHMH will work with PHS going forward to ensure proper budget and staff, and what is the time frame. Dr. Hershberger said he did not know the termination dates for the HIV counselors, but noted that PCAs will be hired within the next few weeks. He said DOHMH will not require additional funding. Mr. Regan asked if DOHMH was confident with respect to the employment opportunities for the current HIV counselors. Ms. Cohen said that the last time counselor positions were eliminated, some counselors took the newly-opened PCA jobs. Deputy Executive Director Cathy Potler said that state law requires pre-test and post-test counseling for all people who take an HIV test. Noting that DOHMH is eliminating eleven HIV counselors and adding four PCAs, she asked how the nurses and doctors will have the time to do the counseling, which often is time-consuming, and asked whether more nurses and doctors are to be hired. Ms. Cohen said test expansion already is successful, increasing from 5,000 to 30,000 tests. She said DOHMH already has a “track record”, and noted that it will monitor testing carefully and share the results with the Board.

Mr. Regan recognized Linda Glover, who said she has been an HIV counselor on Rikers Island for more than 10 years. Ms. Glover thanked the Board for the opportunity to speak, and reported the following:

All HIV counselors have at least one baccalaureate degree. She has an RN, three baccalaureates, and a master's degree. The sole educational requirement for the PCAs who have been hired is a GED. The HIV counselors tested over 13,000 people in the last year. HIV counselors do pre-test and post-test counseling, and supportive counseling. They perform phlebotomies, review charts and consult with doctors about medications. They have certifications in HIV counseling, including pediatric and geriatric, and they attend new certification trainings whenever the programs are available. They are BLS certified. PCAs do not do

pre-test counseling, and are shown only a brief training film. HIV counselors work in jail intake areas, for example at the Rose M. Singer Center.

The plan is for test results to be given to a doctor, and for post-test counseling to be performed by a DOHMH employee; condoms will be distributed by someone else. Four or five people will be needed to do the work of one \$40,000 per year counselor. The new counselors will not be 1199 members, meaning that they are members of the Teamsters or DC 37. This is union busting. The idea that HIV counselors would accept PCA positions is “a slap in the face”; HIV counselors have much better educational credentials. PCAs make many mistakes doing the jobs of HIV counselors: putting rapid tests in patients’ mouths rather than testing properly, recording that tests were performed when they were not, and falsely recording that patients refused testing. A PCA who spoke only English had a Russian-speaking patient who tested positive; the PCA wrote in the chart that the patient tested negative and never communicated the positive test results to the patient.

Mr. Regan next recognized Mindy Venetek, an HIV counselor at the North Infirmary Command. Ms. Venetek said there are no DOHMH employees doing post-test counseling on Rikers Island. She said that none of the seven HIV counselors who previously were laid off had accepted PCA positions because the positions paid \$10,000 per year less. Ms. Venetek said PCAs do not do pre-test counseling because PCAs do not speak with inmates. She said that when she routinely asks tested patients if anyone discussed hepatitis C, Chlamydia or other co-infections, she is told that no one does so.

Mr. Regan recognized Milton Zelermyer from the Legal Aid Society, who asked DOHMH representatives whether, with new personnel to be involved in the rapid HIV testing process, there are changes in the guidelines or substance of pre-test and post-test counseling messages. Dr. Hershberger said the message will remain the same.

Board Member Stanley Kreitman, chair of the Minimum Standards Review Committee, reported that the Board awaits approval from the Law Department for proposed amendments that are under review. He said an answer is expected in a few days, after which the publication process will begin.

Mr. Vallone asked whether there could be a freeze on the Department of Health’s planned personnel actions until the Board’s next meeting, inasmuch as there is no clear plan as to who will be hired. Mr. Regan said that DOHMH will be providing the Board with information. Mr. Vallone asked what the Board’s next step might be. Mr. Regan said it was not within the Board’s purview to force the Department of Health to freeze the actions.

DOC Commissioner Martin Horn reported that an inmate suicide occurred on Friday, November 3rd. He said the decedent was 38 years old, and was being held on a \$10 million bond on enterprise corruption charges. He said the inmate was found at approximately 5 a.m. Commissioner Horn said this was the first suicide since January.

He said the inmate was housed in protective custody at his own request. Dr. Hershberger said he would discuss the details of the inmate's mental health and medical care with members of the Board's Health Committee. Mr. Regan asked that DOC report back to the Board when its investigation is completed. Commissioner Horn agreed, and noted that preliminarily it appears that all DOC staff performed appropriately. Dr. Zornberg asked if DOHMH was looking into whether provider staff performed appropriately. Dr. Hershberger said this was being done. Mr. Vallone noted that there was a substantial decrease in suicides from recent years, and asked if this was the result of policy changes or other factors. Commissioner Horn said no, noting that New York City has one of the lowest suicide rates in the country.

Mr. Regan recognized John Boston from the Legal Aid Society. Mr. Boston urged that the time period for a public hearing and responses to comments regarding proposals to amend the Minimum Standards be as long as is manageable. He said the Prisoners' Rights Project had suggested 120 days. He requested that the public hearing be scheduled toward the end of the public comment period to provide maximum time for all interested parties to prepare and to be heard. Mr. Boston also requested that the comment period be extended for a reasonable time after the public hearing to allow people to respond to what is presented at the hearing. He said these scheduling considerations would enable interested parties to provide useful information to the Board as it deliberates and makes final decisions. Mr. Boston said that it was his understanding that the suicide occurred in a protective custody area, which is operated on 23-hour lockdown. He said that the relationship between lengthy cell lock-in and risk of suicide is pretty well acknowledged. Mr. Boston suggested that the Board consider, in its proposed amendments to the Minimum Standards, limitations on 23-hour lock-in. He said this is as important an agenda for the Board of Correction as is accommodating requests from the Department. He said he hopes the Board has anticipated this thought and has addressed it in its proposed amendments. Mr. Regan said the Board would take Mr. Boston's remarks under advisement.

Mr. Vallone said he hoped that the observations made at the meeting would be considered by the Department of Health. He said he hoped to discuss the issue further with DOHMH at a future meeting of the Health Committee.

Father Nahman said he had received an email from Mr. Boston with the very request he presented at today's meeting. Father Nahman said that the email argued that a firm schedule would be "fairer" than a 90-day schedule that might be extended, if necessary. Father Nahman said he agreed with Mr. Boston, and urged that the Board adopt a firm schedule. Mr. Regan said there is merit to what Father Nahman is suggesting, and that he would like to check with the Law Department on the process. Mr. Regan asked Mr. Wolf to comment. Mr. Wolf said that the basic rulemaking requirement is set out in the City Administrative Procedure Act, which requires a minimum of a 30-day public hearing and comment period from the date of publication of the proposed rule. He said the Board has the authority to extend the comment period, as it already has indicated it intends to do. Mr. Regan said the Board should take a few days to think about how it wants to proceed. He said he expects that the Board will make a decision at

about the time it is ready to publish its proposals. Mr. Kreitman said that what Father Nahman said “makes a lot of sense”. He added that the process must be fair, and should not be rushed, and the end result should be what is best for the system. Dr. Zornberg said she supports the intent to keep the process as fair as possible. Mr. Regan said all Board Members agree.

A motion to renew all existing variances was approved without opposition. The meeting was adjourned at 10:11 a.m.