

**NEW YORK CITY
BOARD OF CORRECTION**

February 9, 2006

MEMBERS PRESENT

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

An excused absence was noted for Member Stanley Kreitman.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Tom Antenen, Deputy Commissioner for Public Information
Judith LaPook, Chief of Staff
Florence Hutner, General Counsel
Eric Berliner, Assistant Commissioner
Mark Cranston, Deputy Warden in Command, Office of Policy and Compliance (OPC)
Ron Greenberg, Director of Policy Development, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Louise Cohen, Acting Deputy Commissioner
Maria Gbur, M.D., Medical Director, Correctional Health Services (CHS)
Jason Hirshberger, M.D., Director, Mental Health, CHS
Farah Parvaez, M.D., Medical Director, Correctional Public Health Services
Robert Berding, Director, Clinical Services, CHS
Vivian Toan, Counsel, CHS
George Axelrod, Director of Risk Management, CHS
Laura Szapiro, Senior Advisor to Deputy Commissioner, CHS

OTHERS IN ATTENDANCE

Don Doherty, Division Vice President, Prison Health Services (PHS)
Jeff Krupski, Mayor's Office of Operations
Trevor Parks, M.D., Medical Director, PHS
Eisha Williams, Legislative Financial Analyst, City Council
Paul von Zielbauer, *New York Times*

Chair Hildy J. Simmons called the meeting to order at 9:30 a.m. A motion to approve the minutes from the January 12, 2006 meeting was approved without opposition.

Chair Simmons introduced new Board Member Rosemarie Maldonado, noting that the Board now has a full complement of nine Members. Chair Simmons noted that Ms. Maldonado is Counsel to the President of John Jay College, and formerly worked at the Law Department, as an administrative law judge, and as Chief Judge of the Human Rights Commission. She added that Ms. Maldonado also served as counsel to the Special Assistant to the Mayor. Chair Simmons said that Ms. Maldonado is familiar with corrections issues and is a welcome addition to the Board. Chair Simmons asked the other Members to introduce themselves, and they did. Chair Simmons announced that Ms. Maldonado would serve on the Board's Health Committee.

Chair Simmons next introduced Louise Cohen, Acting Deputy Commissioner for Correctional Health Services, who previously served as Chief of Staff to Health Commissioner Thomas Frieden, M.D. Chair Simmons said that Commissioner Frieden's willingness to appoint someone with whom he has worked so closely to this position demonstrates his commitment to correctional health issues. Chair Simmons noted that since January, Ms. Cohen had been responsible for "Take Care New York", DOHMH's broad public policy agenda. Chair Simmons reported that Ms. Cohen has worked at DOHMH for ten years, working on asthma and other important initiatives, and brings experience, clarity and vision to her new position. Chair Simmons said that Commissioner Frieden will attempt to come to the Board's March meeting.

Member Gwen Zornberg, M.D., Chair of the Health Committee, presented the Committee's report, as follows:

Foremost on the agenda are items upon which DOHMH is to report, implementation of the variances authorizing changes in psychotropic medications prescribing practices, and in tuberculosis screening.

The Health Committee had an *ad hoc* meeting at the Manhattan court pens following the suicide of an inmate there. The Committee reviewed the records and concluded that everything was done appropriately. However, this is an unfortunate incident. Last month's American Journal of Psychiatry reported that in the general population, adolescents have four times the suicide risk of adults. We can continue to work together to reduce risk, including considering some changes to the Health Standards, which we all agree may be a bit outdated.

The Health Committee had discussed with Dr. Gualtieri the case of a pregnant inmate who died while confined in punitive segregation. Because of coagulopathy associated with pregnancy, sometimes bad outcomes cannot be prevented. Ms. Cohen will make sure that things continue to be done as well as possible.

Performance Indicators (PIs) have been at the top of the Committee's agenda for a long time. There have been changes in personnel, and there have been improvements, but there are areas where there have not been improvements. The Board is looking forward to the computerized system for evaluations, which will immediately help improve a number of indicators.

Dr. Zornberg asked Ms. Cohen to comment on the Indicators, and on the other matters she mentioned. Ms. Cohen stated that DOC Commissioner Horn and Health Commissioner Frieden are extraordinary, and both of their staffs are very interested in correctional health care issues and are moving ahead aggressively to address them. She said that the PI information recently provided to the Board contains more explanations of corrective actions being taken than in the past. She said that evaluating PIs is one method used by DOHMH to evaluate the vendor, Prison Health Services. She said that PIs can be "tweaked", but the Indicators were selected because they are things to be improved. Ms. Cohen said that some PIs have improved, and corrective action plans have been put in place to yield improvements. She said that the computerized intake system, and ultimately electronic medical records, will enable DOHMH to conduct evaluations in more time-sensitive ways.

Dr. Zornberg said the Health Committee will meet soon to review each of the PIs. Chair Simmons thanked the Health Committee members for their hard work. She asked Ms. Cohen for an update on two recently granted variances. Ms. Cohen said that the psychotropic medications variance is being implemented very carefully. She said there have been no reported instances of decompensation, and DOHMH will continue to closely monitor effects of the changes in prescribing practices. Ms. Cohen said that the tuberculosis screening variance has not yet been implemented. She reported that DOHMH has been working on the cross-match with the City's tuberculosis registry, and has not yet finalized how the protocols must be implemented. She said DOHMH wants to be sure it is able to collect all of the data to assess whether the screening changes yield the results DOHMH hopes the variance will yield. Chair Simmons requested that Ms. Cohen provide a further update at the next BOC meeting, and regular reports at monthly BOC meetings thereafter.

Chair Simmons, speaking on behalf of Stanley Kreitman, chair of the Minimum Standards Review Committee, reported that the Committee met earlier this week, without the Department of Correction, and reviewed more of the proposed changes. She said that Mr. Kreitman, for the Committee, will send a letter to DOC that will ask another series of questions seeking further explanations and information. She said that when DOC's response is received, another committee meeting will be scheduled with DOC representatives to review the responses. Chair Simmons said that thereafter, the Committee will conduct another review and prepare materials to share with the full Board. She added that by the Board's next meeting, it should be possible to begin to establish a time frame for the amendment process.

Commissioner Horn presented a report, as follows:

Ron Greenberg will serve as liaison to BOC staff when Mark Cranston is unavailable. Deputy Warden Cranston and Richard Wolf should agree on a date for BOC's visit to Rikers Island.

Regarding the suicide mentioned by Dr. Zornberg, inmate Jose Tavarez committed suicide in the 100 Centre Street court pens on January 13, 2006. He entered custody four days earlier. There were press reports regarding his case. His classification screening was appropriate, and a suicide screening form yielded a score of zero. During medical processing, however, he was referred for mental health evaluation. He was seen by mental health twice, on January 11th and January 12th. On January 13th, he was taken to the Manhattan courts for an appearance, and was placed in a holding pen that historically had been designated for adolescent mental observation inmates. He was not on suicide watch. He was seen at 1454 hours, when another inmate in the pen was taken out. He was seen by a captain at 1510 hours, but five minutes later an officer found the inmate hanging from the upper bars. He used his shirt for the ligature. A physician arrived within 9 minutes, and pronounced him dead. The inmate had no money in his account, had made no telephone calls, and had had no visitors. He left a note, which was found by the Medical Examiner. Review discloses that no one did anything wrong. Adolescent inmates in DOC's custody commit suicide much less frequently than do adult inmates, making this something of an aberration. The State Commission on Correction's Medical Review Board will issue public findings.

Today's count is 13,883 inmates, a substantial increase over the last week of 2005 when the count was 12,600. In January, there was a big increase in police arrests and DOC's "police count"—arrestees who have not yet been arraigned -- remains high, and approximately 60% of the police count prisoners end up in DOC custody. Possible factors include the warm weather, and the NYPD's recent graduation of a large class of rookie officers. DOC is closer to the time when currently-closed facilities may have to be reopened. This will be necessary when the inmate population reaches 15,000. which could happen quickly.

On January 19th, two inmates – Hendricks and Pearson – attacked an attorney in an effort to escape from Brooklyn Supreme Court. Luckily, court officers were able to subdue them. They were armed with sharpened plexiglass weapons. One inmate had two sharpened arms from a pair of glasses, which were held together with cloth and tape. This was found in the rectum of one of the inmates. Both were "Red I.D." inmates, having previously used weapons or committed a stabbing or slashing in jail. They had been strip searched, pat frisked, and put through metal detectors

before leaving Rikers Island. DOC believes the plexiglass weapons were concealed in their rectums thereby avoiding detection. They were taken to the court house in restraints and mitts. Upon arrival, procedure calls for the receiving officer to pat frisk them before placing them in the pen. Videotape of the area establishes that the officer failed to do so. It is not clear that the weapons would have been detected during a pat frisk. Restraints were removed when the inmates were placed in the court pen. When taken by court officers from the pen to go into court on two occasions, neither inmate was pat frisked. The rules and regulations of the Unified Court System do not require court officers to pat frisk. DOC has written to Administrative Judge Lippman asking that the policy be reconsidered and made mandatory, rather than discretionary, because it is believed that the inmates retrieved the plexiglass during the lunch break and placed the weapons in their clothing. Had the inmates been pat frisked before returning to court, DOC believes the chance of finding the plexiglass would have been far greater. The court officers performed admirably. A correction officer failed to do his job and he will be disciplined.

Father Nahman asked if the inmates were on trial or at a hearing. Commissioner Horn said it was a trial, that a mistrial had been declared, and that the judge has barred the inmates from attending court, opting to have them instead view the proceedings on video. Executive Director Richard Wolf said the press accounts suggested that the inmates' goal was not to escape, but to get a mistrial. Commissioner Horn said that at the last BOC meeting, Member Paul Vallone had asked for an update on inmates who requested gay housing since DOC closed the gay housing areas. Commissioner Horn said that the areas continue to exist, and are being closed by attrition, with approximately 40 inmates remaining in them. He said that since January, 10 newly-admitted inmates have requested gay housing: three were placed in general population (GP) and appear to be fine. He reported that the other seven have been placed in GP with escorts, in small dormitory or cell areas, depending on classification score, where they can be watched more closely. Commissioner Horn said that DOC is using options with gradations of observation and protection beyond GP or lockdown. He said that the most extreme would be full protective custody-- complete lockdown – which would be used for an inmate whose enemies are unknown, and there are only three or four inmates in the entire system in that status. He said two are accused of abusing and killing their young children. He added that inmate Pearson from the Brooklyn court house incident came from gay housing, which underscores the absurdity of allowing inmates, regardless of classification score, to dictate where they can be housed by asserting, "I want gay housing."

Father Richard Nahman asked about DOC's cooperation with federal officials on a project involving the Prison Rape Elimination Act (P.R.E.A.). Commissioner Horn said that the P.R.E.A. requires the Justice Department's Bureau of Justice Statistics (BJS) to gather from inmates' self-reports, information about rape in prison or jail. He said BJS is attempting to perfect its survey instrument as well as its method of administering the

instrument using kiosks, known as ACASI (Automated Computer-Assisted Survey Instrument). The Commissioner said that DOC volunteered to be one of the test sites, for two reasons: (1) we are interested in the Federal government developing a good product because we believe DOC will “show up well”; and (2) we believe it will give us a preview of what the findings will be. Chief of Staff Judith LaPook said the survey will begin on February 20th. Deputy Warden Mark Cranston said approximately 200 inmates, chosen at random from two jails, will participate in the survey. Commissioner Horn said that when DOC receives the survey results, it will learn whether it has a problem. He added that the states with the worst and the best survey results will be called before a national commission. He said he believes DOC will be called to explain “what we are doing right.”

Commissioner Horn said DOC submitted to the Board a request for a variance to require inmates in punitive segregation to wear jumpsuits to non-trial court appearances. He said DOC had received an interim variance, and requested that the full Board now approve the variance. Mr. Wolf said that, in response to a notice sent by BOC inviting comment from “interested parties” as required to the Board’s variance-consideration procedures, the Board received a letter in opposition from the Legal Aid Society and a letter in support, received late last evening (February 8th) from the Correction Officers’ Benevolent Association. A motion to grant the variance was made, seconded, and adopted without opposition.

Commissioner Horn said DOC has changed its policy regarding how inmates receive money for deposit into their commissary accounts. He said that in calendar year 2005, DOC received 269 complaints from inmates that cash sent to them in the mail never was credited to the inmate’s account. He said that effective February 1st, DOC will no longer accept cash through the mail, although the new policy will actually be implemented after a 28-day grace period. He noted DOC is not confiscating the cash: if cash is received, it first will be deposited against any charges incurred by the inmate; second, it will be used to allow the inmate to bail himself out; and third, the cash will be sent to a third party designated by the inmate. Chair Simmons said that the goal is to discourage inmates from having money sent to them by mail, and Commissioner Horn agreed. The Commissioner said that DOC will continue to receive cash at its three bail windows. Commissioner Horn added that in fiscal year 2005, DOC received \$1.2 million in cash through the mail. He said that DOC receives a total of approximately \$20 million each year. He added that the Municipal Credit Union will place two ATMs on Rikers Island in the visit registration center, and one each at VCBC in the Bronx and BBKC in Manhattan. He said that DOC hopes that soon it will have the capability of accepting deposits to commissary accounts, and bail deposits, via the Internet utilizing PayPal and credit card payments. Mr. Wolf asked if DOC will continue to allow people to make cash deposits into inmate accounts in person, and Commissioner Horn said yes.

A motion to renew all existing variances was made, seconded, and approved without objection. A motion was approved without opposition for the Board to go into executive session to discuss personnel matters, and the public meeting was adjourned at 10:10 a.m. The Board convened in executive session until 10:25 a.m.