

**NEW YORK CITY  
BOARD OF CORRECTION**

**March 10, 2005**

MEMBERS PRESENT

Stanley Kreitman, Chair  
John R. Horan, Vice Chair  
Jane Paley Price  
Hildy J. Simmons  
Paul A. Vallone

Excused absences were noted for John H. Banks III, Richard Nahman, O.S.A., and Michael Regan.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner  
Tom Antenen, Deputy Commissioner for Public Information  
Florence Hutner, Deputy Commissioner for Legal Matters  
Roger Parris, Deputy Commissioner, Health and Mental Health Services  
Judith LaPook, Chief of Staff  
Mark Cranston, Deputy Warden in Command, Office of Policy and Compliance (OPC)  
Elizabeth Myers, Director, OPC  
Deputy Warden Harry Ahl, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

James Capozziello, Deputy Commissioner, Division of Health Care Access & Improvement  
George Axelrod, Director of Risk Management, Correctional Health Services (CHS)  
Robert Berding, Director, Clinical Services, CHS  
Donald Kern, M.D., Medical Director, CHS  
Vivian Toan, General Counsel, CHS

OTHERS IN ATTENDANCE

Jeff Krupski, Mayor's Office of Operations  
Trevor Parks, M.D., Medical Director, Prison Health Services (PHS)  
Becky Pinney, Group Vice President, PHS  
Russell Unger, Legislative Counsel, City Council  
Paul von Zielbauer, *New York Times*  
Dale Wilker, Legal Aid Society's Prisoners' Rights Project (PRP)

Chair Stanley Kreitman called the meeting to order at 1 p.m. A motion to approve minutes from the January 13, 2005 meeting was approved without opposition.

Chair Kreitman welcomed new Board Member Paul A. Vallone, who was appointed by the City Council.

Chair Kreitman reported that the subcommittee reviewing the Minimum Standards has met several times and is making good progress. He said there soon will be a meeting with the Department of Correction to discuss the Board's recommendations and to solicit DOC's views. Thereafter, the Board will reach out to interested constituencies for comments. In response to a question from Board Member Hildy Simmons, Chair Kreitman said that the full Board would have input into the recommendations before they are shared with DOC.

Chair Kreitman asked DOC Commissioner Martin Horn to comment on Judge Bamberger's decision concerning inmate Santiago, and to report on the status of the other inmates who also have been in lock-down status. Commissioner Horn reported as follows:

The fundamental issue is how to deal with inmates who are a threat to other inmates. In this case, several inmates are suspected of having murdered another inmate. There have been cases in which inmates have committed sexual assaults. The Department has an obligation to take action to prevent such inmates from committing further acts, and would expose the City to liability if it did not do so. It also is important to prevent intimidation of witnesses and also to protect alleged perpetrators from other inmates. The Judge did not rule that putting the inmate in lockdown was illegal. Rather, the issue was procedural. The Judge questioned the evidence presented at a hearing, finding that DOC did not meet the "substantial evidence" requirement by relying on the Indictment accusing Santiago of the inmate's murder. The Judge found that the hearing was not held in a timely fashion, and that the hearing officer did not afford the inmate the right to present evidence. The Judge also found that DOC had violated the condition imposed by the Board when it granted the variance authorizing 23-hour lockdown.

It is difficult to manage this problem with variances, because BOC cannot grant a variance unless it meets or teleconferences pursuant to public notice. DOC has changed its procedures. Hearing officers now are given specific information, including sometimes from confidential sources. DOC is not conducting infraction hearings, but is providing due process pursuant to Directive 6005, including 28-day reviews of decisions as required by the Directive. Inmates may present evidence and have an attorney present.

DOC no longer is relying on BOC variances. A letter from Mr. Wolf to former Deputy Chief Grant suggested that DOC return to a former practice: placing in administrative segregation inmates who are charged with infractions and expeditiously holding infraction hearings. The problem is that District Attorneys do not want to make their witnesses available or to have DOC interview the victim or defendants, because this creates discoverable material. DOC believes

that pursuant to the Board's Standards, Section 1-02, subdivision 2 (v), the Board provides sufficient authority for DOC to lock inmates in, and to deprive them of rights and privileges consistent with their security status. DOC operates under longstanding Directive 4100 and uses the procedure outlined in Directive 6005.

DOC has looked at the State Commission of Correction standards, which every other county operates under. The burden is on those who would impose a higher standard to demonstrate why the higher standard is called for. Higher standards impose costs and sometimes can compromise our ability to manage. Every one of the fifteen largest counties provide for lock-in of inmates who are facing charges and inmates who are in protective custody. DOC believes that the current BOC Standards are open to an interpretation that allows it, and that is the assumption that the Department now is proceeding under.

BOC Vice Chair John Horan asked about the inmates who were locked down and have not asked for a hearing. BOC General Counsel Florence Hutner said all are receiving the Directive 6005 procedure and have the opportunity to object to their conditions of confinement. Commissioner Horn added that only five inmates associated with the homicide remain in lockdown. He said that other inmates who were in pre-hearing detention have had infraction hearings and served punitive segregation time. The Commissioner said that the maximum punitive segregation penalty upon conviction for an infraction is 90 days, so in the case of an inmate who is alleged to have sexually assaulted another inmate, the question is: do you release the inmate back into general population after 90 days? He asked what happens if the released inmate then assaults a second inmate. Commissioner Horn said this is why DOC utilizes administrative segregation: some inmates by virtue of their conduct need to be confined at a higher level of security, and DOC believes the Board's Standards allow for this. BOC Executive Director Richard Wolf said that the substance of the 6005 hearing has changed to comport with Judge Bamberger's decision. Commissioner Horn agreed. He said DOC met with the Bronx District Attorney's office and were provided with sufficient information to make the required "showing" at the hearing without compromising the criminal case. Mr. Wolf asked if it is DOC's position that it no longer is relying on BOC variances to lock down inmates. Commissioner Horn agreed.

Chair Kreitman asked Mr. Vallone to join the Board's Legal Committee and Ms. Simmons to join the Health Committee.

Commissioner Horn said DOC had cross-matched the Board's Standards with those of the State Commission, and also researched the standards of the American Correctional Association. He said that DOC currently operates under 125 variances, some dating back to 1980. Noting that the Board's subcommittee continues its work on reviewing the BOC Standards, the Commissioner said that Deputy Warden Mark Cranston is available to work collaboratively with the Board.

Mr. Vallone said it was a pleasure to serve on the Board and complimented the Board's staff. Mr. Vallone said that the issue of lockdown raised the broader question of dealing with troublesome inmates. He asked whether there is a separate segregation area in which such inmates could be confined, between general population and lockdown. Mr. Vallone asked if the Board could be of assistance in creating a separate process that would not rely upon a hearing.

Mr. Horn said DOC no longer needs a variance, and is managing the issue internally. He said affected inmates get a hearing within 72 hours.

Chair Kreitman asked for a report on operations under variances that allow DOC to operate certain dormitories at less than 60 square feet per inmate. Commissioner Horn said that conditions have remained the same, noting that DOC has provided detailed information to the Board with respect to maintenance, contraband discoveries, and acts of violence. He said the variance has enabled DOC to save money by operating the affected housing units more efficiently. Mr. Wolf said that he had spoken with DOC staff and, with the approval of the Members, had agreed that DOC could provide both maintenance and violence data on a monthly basis. He said he had spoken with Deputy Warden Mark Cranston about providing “context” for the data, and asked the Members if they were satisfied with the additional information. Ms. Simmons said it would be useful to have a brief narrative that puts the data into context. Commissioner Horn said the new report does just that.

Chair Kreitman said that after the January meeting, at which a suicide was discussed, he sent a letter to the Commissioner asking if there was a product available that would prevent cell air vents from being used by inmates to commit suicide. Commissioner Horn said he responded to Chair Kreitman’s letter, noting that DOC has fabricated its own vent and installed them in the areas that DOC believes house inmates at greatest risk: new admissions and mental health areas. He said Chair Kreitman’s letter suggested replacing all of the vents. Commissioner Horn said that many thousands of vents would have to be replaced, and that doing so ignores other items to which that inmates can attach ligatures, such as lighting fixtures and door hinges. The Commissioner said DOC has removed lockers and is planning, with DOHMH, to move MHAUII (Mental Health Assessment Unit for Infracted Inmates) to a new area with molded plastic beds. He said that to replace vents without replacing light fixtures does not make sense, especially if the inmates retain items from which they can make ligatures such as shoe laces and belts. Mr. Wolf said that BOC’s suicide data base reveals that 30% of suicides since 1986 – 21 suicides – were accomplished with a ligature attached to an air vent. Commissioner Horn said that in Westchester County the ceilings are higher, and he noted that the jail construction in New York City is “terrible”, including new jails. He said that more than \$1 billion is available to construct 5000 new beds, with 1200 already “in process”. Commissioner Horn said that for the remaining beds, the question is where to build them and how to build them. Mr. Wolf noted that the areas in which DOC has replaced vents – new admissions and mental observation – accounted for 9 of the 70 suicides. He said this suggests replacing the vents helps to reduce suicides. Commissioner Horn responded that there is more supervision in these areas. Mr. Vallone said that not addressing one problem because there are other problems does not seem like a good idea. He asked if DOC had a “wish list” of which vents it would replace first. Commissioner Horn said DOC is replacing 2500 vents. Mr. Vallone asked if there is a process by which inmates who are identified as at risk for suicide are moved to cells with retrofitted vents. Commissioner Horn said there was. Mr. Wolf said that of the 21 suicides by hanging from ligatures affixed to air vents, 12 were in general population. Commissioner Horn said it was possible that the system was not doing as effective a job identifying at-risk inmates and removing them from general population.

Chair Kreitman asked for a report on DOC’s inmate drug testing program. Commissioner Horn reported as follows:

For many years, DOC has had a drug-testing program for employees. Several years ago the Federal government changed its laws to require jurisdictions to have a random drug-testing program if it received federal funds. Drugs are found frequently in the jails. Drug use by inmates is inconsistent with the mission of corrections. Drugs are related to violence, suicides, mental health issues and staff corruption.

His experience in Pennsylvania convinced him that drug testing works. When he began the program, 10% of the prisoners tested positive. Today, less than 0.5% test positive. Prisoners leaving Pennsylvania prisons are sober.

The City program was begun in January two facilities, AMKC and EMTC. Thus far, approximately 2000 inmates have been tested. 7% tested positive in January and 5% in February. Inmates are not tested during their first 30 days of confinement.

Mr. Wolf said the time period was 15 rather than 30 days. Commissioner Horn agreed, and noted that two more jails wish to begin drug testing. He said the predominant drugs are heroin and marijuana. Mr. Wolf asked if DOC has a timetable for bringing the other jails into the program. Commissioner Horn said it depended on budget. Ms. Simmons asked which two jails asked to join the program. Commissioner Horn said he was not sure. Mr. Vallone asked what happens when an inmate tests positive. Commissioner Horn said inmates can lose contact visits. Mr. Horan asked if inmates lose contact visits even if DOC does not relate the drugs to visits. Commissioner Horn said that most jail drug “finds” are associated with “the course of visiting”. Mr. Horan said he was not sure taking away contact visits without a showing in the specific case may not be permitted under the Minimum Standards. Commissioner Horn said he was open to alternative suggestions. Mr. Vallone asked what worked in Pennsylvania. Commissioner Horn said they used fines, deprivation of contact visits, and mandatory treatment. He said it is important to create disincentives to using drugs, and “one of the most important things inmates have are contact visits.” Mr. Wolf asked if DOC could obtain additional funding from sources such as the City Council to implement inmate drug testing in other facilities. Commissioner Horn said that OMB views efforts to date as a pilot project, which will continue for a year.

Chair Kreitman turned to correctional health issues. He noted that articles had recently appeared in the *New York Times* and that a Board meeting is not the forum at which to debate the articles. Chair Kreitman said he wanted assurances that the vendor was providing proper medical and mental health care services to inmates according to the contract. Chair Kreitman asked for comments regarding several issues raised in the articles, including staffing shortages – particularly psychiatrists – and the over-reliance on temporary agencies, lack of provider-staff training, clerical staff shortages, and delays in inmate-patients receiving medication. DOHMH Deputy Commissioner James Capozziello responded as follows:

There are more things to do and DOHMH and the vendor are looking at them. There is room for improvement, but the City is proud of what has been done. DOHMH is very proud of the structure of the contract. There is no incentive not to provide care or to maintain staff shortages. It is not a capitated contract. There is no incentive to not provide medi-

cation because medication is funded outside of the contract.

Nonetheless, there are shortages: there are nursing shortages nationwide. It is not surprising that it is difficult to recruit providers to work in jails that are on Rikers Island. A nationwide psychiatric shortage makes it difficult to recruit full-time staff for the Island. The fact that someone will work part-time does not make them a substandard provider, which is implied in the article. Although DOHMH would prefer that all psychiatrists work full-time on Rikers, someone who is maintaining a private practice and is willing to work on Rikers two or three days a week is not a provider “who has no other option”. Using part-timers does not equate with a diminution of services.

Chair Kreitman, noting that several Performance Indicators are “not met”, asked whether DOHMH was satisfied that the vendor is living up to its responsibilities under the contract and whether the vendor is providing “good health services”. Mr. Capozziello responded that if DOHMH were not satisfied, it would not have awarded a new contract to Prison Health Services (PHS). He said hundreds of organizations were invited to bid; 40 attended a bidder’s conference; four proposals were received. He said there was no doubt but that PHS’ proposal was “far and away” the best both in terms of quality and in cost-effectiveness. Mr. Capozziello said the *Times* article correctly noted that the City has a more vigorous oversight program for its correctional health contract than anywhere else in the country. Board Member Jane Paley Price asked whether the additional two psychiatric supervisors had been added. Mr. Capozziello said he will provide the Board the information regarding additional staff, but noted that one cannot assume that all new components of a contract will be in place on the first day of the contract. He said the Comptroller did not register the contract until December, and newly-funded positions require time to hire. Mr. Capozziello said that DOHMH informed PHS it expects a new mental health care delivery model to be in place by the end of this month. He said this includes new psychiatric supervisors, the dedication of staff to specific facilities, and ending the practice of “floating” under the previous matrix. He said he will supply the Board with information on these issues before the next meeting. Mr. Vallone asked what happens if PHS does not meet a Performance Indicator. Mr. Capozziello said DOHMH meets regularly with PHS to discuss the Indicators, and seeks to learn why failures have occurred. He said that even with a 95% standard, if the cell size is small, such as 12 patients, the failure with respect to only one would still fall short of 95% performance. Mr. Capozziello said that liquidated damages have been enhanced under the new contract. He said that for some critical Indicators, such as dealing with abnormal x-ray or lab reports, compliance has been increased to beyond 95%. Mr. Vallone asked Mr. Capozziello if he agreed that failure to meet Indicators was tied to inadequate staffing. Mr. Capozziello said no. He said that inmates are a very sick population – more so than people on the outside – with HIV and diabetes, and are highly mobile and transient with 50% incarcerated for three days or less. Mr. Vallone asked what will change. Mr. Capozziello said that the system is moving towards specific chronic care management programs for HIV, asthma, hypertension and diabetes. Mr. Vallone asked whether any changes could be measured by the next BOC meeting. Mr. Capozziello said that nothing we do now could be measurable by the next meeting. He said measuring success is difficult when the system does not have a patient “longitudinally”. He said the system does not have an inmate-patient long enough to determine that, for example, a disease has been cured. Ms. Simmons said that certain things can be looked at, for instance, Pap smears done on women who previously had not had them, and Rapid HIV testing. She described this as a “modest, but important accomplishment.” Mr. Capozziello said that one change is that

Rapid HIV testing, which had been “offered” at intake, will now be “offered and performed” at intake. He agreed to provide updates on this and similar initiatives. Ms. Paley Price asked about the reduction in dental staff. Mr. Capozziello said even with the reduction, dental services comply with the Board’s Standards, which is 21 days. He said the reduction allows DOHMH to apply the savings to other services. He said the overall cost of the contract has increased. BOC Deputy Executive Director Cathy Potler said the Board’s Standards require that an initial examination occur within 21 days, but the patient must be treated “within a reasonable time thereafter”. Ms. Potler asked if DOHMH was satisfied that all Standards requirements will be met, and Mr. Capozziello said yes. Mr. Wolf asked if the Board presents anecdotal information to the contrary whether DOHMH will revisit the issue. Mr. Capozziello said he would. He added that one of the richest feedback groups is a complaint system, and noted that individual complaints sometimes provide a “window” to larger problems. Regarding the staffing shortages and recruitment difficulties mentioned earlier, Mr. Wolf asked Mr. Capozziello whether the salaries offered by PHS are competitive. Mr. Capozziello said that the salaries are a product of collective bargaining with the Doctors’ Council, patterned on negotiations that occur with the League of Voluntary Hospitals.

A motion to approve the Department of Correction’s request to renew existing variances was approved without opposition. The meeting was adjourned at 2 p.m.