

**NEW YORK CITY
BOARD OF CORRECTION**

September 12, 2002

MEMBERS PRESENT

Stanley Kreitman, Chair
John R. Horan, Vice Chair
John H. Banks III
Louis A. Cruz
Richard M. Nahman, O.S.A.
Jane Paley Price
Fredrick J. Patrick
Michael J. Regan

DEPARTMENT OF CORRECTION

William J. Fraser, Commissioner
Gary Lanigan, First Deputy Commissioner
Leroy Grant, Chief of Inspectional Services and Compliance Division (ISCD)
Anthony Serra, Bureau Chief
Elizabeth Loconsolo, General Counsel
Roger Parris, Deputy Commissioner
Sandra Smith, Assistant Commissioner
Captain Angel Rivera
Captain Brian Suprenant
Elizabeth Myers, ISCD

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Jr., Executive Director
Michael Tannenbaum, Chief Operating Officer
George Axelrod, Chief Risk/Quality Officer
Patrick Brown, M.D., Medical Director
Arthur Lynch, Mental Health Director
Robert Berger, Director, Service Delivery Assessment Unit

OTHERS IN ATTENDANCE

Amy Anderson, NYU
C. Dapkovich, Office of Management and Budget
Becky Pinney, Project Director, Prison Health Services
Trevor Parks, M.D., Medical Director, Prison Health Services
Jacqueline Riley, Finance Division, City Council
Marylynne Werlwas, Prisoners' Rights Project, Legal Aid Society

Chair Stanley Kreitman called the meeting to order at 1 p.m. A motion to adopt minutes from the Board's June 13, 2002 meeting passed without opposition.

Noting that the Department had just closed the Queens House of Detention, Chair Kreitman asked DOC Commissioner William Fraser to comment on budget cuts that the Department has been directed to make. Commissioner Fraser said that DOC submitted proposals to reach its targeted cuts totaling 7.5%, or \$65.5 million, and noted that the process of implementing budget reductions involves negotiations with the Office of Management and Budget, the Mayor's Office, and the City Council. He said that previous budget reductions had been met by DOC "giving back" revenue to the City, including funds received from both the Federal government (for housing criminal aliens in City jails) and the State government (reimbursement for housing State prisoners). Commissioner Fraser said that although "other than personal services" (OTPS or non-salary) expenditures will be reduced by \$1.5 million, the current cuts will be met mostly by reducing "personal services" (PS). He said that the Department's OTPS budget funds purchases of security equipment and certain plant maintenance expenditures, so DOC's ability to reduce OTPS is very limited. Commissioner Fraser discussed the process of making PS cuts as follows:

The goal was to avoid layoffs. DOC must eliminate budgeted positions from its Table of Organization. This is to be accomplished through attrition, and involves the permanent loss of 756 positions. The process must ensure that safety and security in the jails will not be adversely affected by eliminating the positions, so the Commissioner relied heavily on his senior uniformed staff members to identify positions that could be eliminated safely. He also invited participation by the unions.

By closing the Queens House of Detention, DOC "killed three birds with one stone". Previously-identified scheduled maintenance construction work is required at Queens, including food service and fire safety. Such work normally is accomplished using "rollover": one floor is closed for renovations, but the facility remains open. For example, at the Bronx House of Detention, working on the top floor would require that capacity be temporarily reduced from 469 beds to 256. Because jails are typically two-thirds "support staff" - employees working in the receiving room, clinics, and other positions not directly supervising prisoners in housing areas - it is prudent management to close the facility, relocate the 256 inmates to other jails, and redistribute staff. Applying this notion to the Queens House allows DOC to reduce overtime, speed maintenance and renovations, and consolidate bed space to operate more efficiently.

Commissioner Fraser said there is no plan by the City to use the Queens House for any other purpose. He said that it will be reopened if increases in the inmate census make it necessary to do so, but he noted that the census has remained low - between 13,700 and 14,200 inmates. The Commissioner said that the positions eliminated by attrition will not be replaced, and that correction officer recruit classes scheduled to begin training in December, 2002 and June, 2002, have been canceled. Finally, he noted that the wardens continue to assess the impact of the reductions at each jail, and that further changes may occur, particularly if the Mayor's Office or

the City Council object to particular cuts. Board Member Michael Regan asked if the building was being "mothballed". The Commissioner said that it was not, and that fire watch and construction maintenance staff are in the building, totaling approximately fifty positions.

Chair Kreitman asked the Commissioner to comment on newspaper reports of a new lawsuit that plaintiffs seek to have designated as a class action. Commissioner Fraser responded as follows:

Over the last three years, approximately 21 complaints - allegations of abuse of force - were made by individual inmates. One inmate, Ingles, hired a law firm. The Legal Aid Society now is trying to certify all 21 complaints in conjunction with Ingles. They haven't been able to do it and the City will fight Legal Aid's attempt to do so. The lawsuit claims there is "unbridled abuse of force widespread throughout the facilities without training, with tacit approval" from the Commissioner and his subordinates. This allegation is totally untrue. All officers receive the same training, including CPSU.

DOC itself has brought several employees to the attention of the DA's Office over the last several years. The Department vehemently denies the allegations and will fight them. There is no systemic abuse of prisoners going on in any DOC facility.

Chair Kreitman asked the Commissioner to discuss a recent decision in the *Handberry v. Thompson* lawsuit. Commissioner Fraser said that the decision was quite favorable to the Department, although some aspects of the decision will be appealed. He said that the monitor will continue for another two years. DOC General Counsel Elizabeth Loconsolo said that Judge Constance Baker Motley's Order requires that DOC comply with the City's Education Plan that the City previously had submitted. She noted that the Judge found "some noncompliance" by DOC. Ms. Loconsolo noted that several of the new steps added by Judge Motley were originally proposed by the City in its "Corrective Action Plan". Ms. Loconsolo said that the City will file for reconsideration of the Judge's decision, and will appeal.

Board Member Father Richard Nahman asked about the status of the Department's appeal of a decision by Judge Harold Baer that required DOC to have six-foot separations between beds in dormitories. Ms. Loconsolo said that the stay granted by the Second Circuit Court of Appeals remained in effect, and cross motions have been filed. Commissioner Fraser said that DOC is proceeding with shower renovations, and window and lighting repairs even as the appeal continues.

Board Member Jane Paley Price asked whether violence levels remained low over the summer. Commissioner Fraser said that for the fiscal year that ended on June 30, 2002, there had been 29 stabbing and/or slashing incidents. He added that there were no incidents in August, and that both "A" and "B" uses of force continue to decrease. The Commissioner noted that inmate-on-inmate violence had been increasing, but decreased in August and thus far in September. Ms. Paley Price asked which gangs have the most members. The Commissioner

identified the Latin Kings, Bloods, and Crips. He said that DOC is monitoring a new Mexican gang, M-18, whose members are based in Corona, Queens and in Washington Heights.

Board Member Fredrick Patrick asked what the *Handberry* Court is ordering DOC to do with respect to library services. Ms. Loconsolo said the issue is part of the City's motion for reconsideration and its notice of appeal. She said that the issue is lack of space.

Commissioner Fraser said that, in response to Board Member Louis Cruz's inquiry regarding whether Hispanic inmates committed suicide in disproportionately high numbers, DOC did a study of all inmate suicides in the last ten years. He said there were 40 suicides, or 4 per year. In contrast, the Commissioner noted that England had 200 prisoner suicides each year. During the 10-year period, there were approximately 1.2 million admissions into City jails. Of the City's 40 suicides, Commissioner Fraser gave the following breakdown: 1 was Asian, 4 were African-American, 17 were Hispanic and 10 were white. He said that although the number of Hispanics is somewhat high, it is not so high as to be a predictor of who will attempt to harm themselves. He said that 24 of the 40 were charged with serious crimes, including murder, robbery or other serious violent actions. He added that perhaps half of all admissions to the system face similar charges. The Commissioner said it was very difficult to identify who might be at risk for self-harm, especially if the person does not have a "serious mental health background". He added that DOC was working closely with Correctional Health Services (CHS), particularly Arthur Lynch. Board Member John Banks III asked if the Commissioner discerned a trend. The Commissioner said that last year there were two suicides, but that the number fluctuates - in the preceding years there were five, two and six. BOC Executive Director Richard Wolf said that the Board of Correction's Mental Health Minimum Standards and Health Care Minimum Standards have contributed importantly to the City's relatively low numbers of suicides. He said that the Mental Health Standards require that there be an inmate observation aide program. He added that they also require that there be enough mental health staff providing appropriate services to aid in the identification of inmates who may be at risk for self harm. Mr. Wolf said that the year before the Mental Health Standards were implemented, there were 11 suicides - a much higher number than the average cited by the Commissioner. Commissioner Fraser agreed, and added that the Board has effectively worked together with the Department on many other important issues as well, including violence, force and programs. He said that success depends upon everyone working together, even if we do not always agree.

Returning to the *Handberry* case, Vice Chair John Horan asked about the extent to which DOC relies on volunteer efforts to augment educational services in the jails. Ms. Loconsolo replied that *Handberry* addresses Board of Education (BOE) services only. She said that BOE educational service must be provided to 16 and 17 year-old inmates, and must be offered to 18 to 20 year-old inmates.

Chair Kreitman asked CHS Executive Director Ernesto Marrero to report on performance indicators (PIs) for the Prison Health Services contract. Mr. Marrero reported on the 2002 second quarter results, noting that of the 37 PIs that were measured, 9 were met, 22 were substantially met, and six were not met. He said this was the smallest number ever of PIs that failed to meet or substantially meet their targets, resulting in the smallest amount of liquidated

damages ever imposed, \$30,000. Robert Berger, Director of CHS' Service Delivery Assessment Unit, distributed three graphs that presented data showing that the number of PIs "met" and "substantially met" has increased in each quarter of the contract, as has the number receiving 85% compliance or higher, and that liquidated damages have decreased in each quarter. Chair Kreitman asked Mr. Marrero if he was satisfied that the vendor is meeting all aspects of the contract. Mr. Marrero replied that he is satisfied with the health provider. Chair Kreitman said that he was impressed with the appearance of the clinic at the Manhattan Detention Complex, and compared it to what he saw when he first joined the Board of Correction and visited the clinic at the Brooklyn House of Detention, which he described as "horrible". He said the improvements are impressive. Mr. Horan asked about HIV PIs that were not met. Mr. Marrero said that believed the failures were due to the same inmate/patient. He said that the "universe" of inmate/patients might have been as small as six, so if one were missed, it has a major effect on the overall compliance percentage. Mr. Wolf asked Mr. Marrero to explain why the PIs for on-Island specialty care, radiology and laboratory were not met. Mr. Marrero said that laboratory and radiology should be met, and that he warned the provider that if it does not improve in these areas, he will double the liquidated damages. He said that the laboratory PI had improved from 11% in the first quarter, to 89% in this, the sixth quarter of the contract. Mr. Wolf asked what tasks were not being performed in timely fashion 11% of the time. Mr. Marrero said that abnormal laboratory results must be reviewed and charted within 48 hours. He said that the same requirement is measured by the radiology PI. Regarding on-Island specialty clinics, Mr. Marrero said that compliance is in the "high eighties", but not high enough to constitute substantial compliance. He said that each clinic's ability to schedule appointments varied due to each facility's "idiosyncracies", and that this led to centralizing the scheduling function, which has improved performance, although not enough to achieve substantial compliance. Mr. Marrero said he expected substantial compliance by the end of the year.

Chair Kreitman asked Mr. Marrero about a letter sent by BOC's Deputy Executive Director, Cathy Potler, who inquired about the use of certain intake questions for mental health. He quoted from the letter, "PHS practitioners have brought to our attention a new medical intake procedure...which they believe inhibit inmate-patients from candidly and fully discussing medical and mental health issues with the clinicians." He noted that the letter asked Mr. Marrero to reconsider and direct PHS to rescind its memo so the clinicians would not have to ask the very personal questions now required. Mr. Marrero said that he had reviewed 19 suicides, looking for variables that might help to predict inmates who were at risk. He said the review revealed that most of the suicides occurred among general population inmates, and that a substantial percentage took place around court dates, specifically convictions or pleas involving substantial prison time. Mr. Marrero said that these findings led him to believe that inmates who otherwise were not known to mental health services might need support. He said that the questions were designed to identify such people. Mr. Marrero said that he shared the questions with Board staff, who responded with concern that the questions might chill patient-doctor communications, and thereby influence the extent to which the patient chooses to access services. Mr. Marrero said that the BOC response caused him to "pilot" the questions at the Queens jail, rather than fully implement them throughout the system. He said that the results indicated no decrease in sick call usage, so Mr. Marrero concluded that asking the questions did not impact inmate access to care. Further, he said that the questions were asked at the end of the intake physical, so that if an

inmate were to stop speaking when he heard the questions, this would not affect the provider's ability to get a history from the inmate, because all other questions already had been asked. Mr. Marrero said that the study also revealed that the doctors were not always asking the questions. Mr. Marrero said he was not surprised to learn that the doctors had contacted the Board, and that the additional questions had become a union issue. He said that CHS is monitoring all clinics to see whether, as a result of the questions, inmates do not access care. He said that 78% of the inmates thus far have fully answered the questions. In the 22% of cases in which the questions are not answered, Mr. Marrero said he believes the problem lies with the provider, not the inmate. Mr. Wolf asked why. Mr. Marrero said that the same provider wrote the same refusal using the same language. Mr. Kreitman then read the questions: "What are you accused of doing? Who do they say you did this to? Is it a felony? Do you have any prior felonies or time upstate? Did they offer you a deal or a plea? What do you think will happen?" Mr. Marrero said that his study of the 19 suicides had revealed that 3 were charged with murdering their wives, 3 were charged with assaulting their girlfriends. Mr. Marrero said that when one does something to a person who is one's sole mental health support, this can increase the risk for suicide. He said that knowing who the alleged victim was is important to assessing an inmate's risk for self harm. Mr. Marrero said that similarly, the time one is facing correlates directly with feelings of hopelessness. He said that if one in 10,000 times the questions identify someone who should be in mental observation, 12 additional inmates would receive mental health services who otherwise would not access them. Mr. Wolf asked if the pilot has ended, and whether the questions are still asked at the end of intake. Mr. Marrero said this is the case, and added that CHS is reviewing every intake as well as every set of the six questions, in an effort to determine whether answers to the questions are resulting in additional inmates being housed in mental observation areas. Board Member Louis Cruz asked whether DOC staff could review criminal records and provide the same information to CHS, thereby eliminating the need for the questions. Mr. Marrero said that the criminal records at intake might not reveal the prison time "risk" to an inmate, because if a Class E felony results in charges of a persistent felony offender, the prison time exposure becomes much greater. He added that such information is not available to DOC. Mr. Marrero said that all efforts to obtain useful information will be explored, and he expects that the Office of Court Administration and the District Attorneys will become involved.

Ms. Paley Price said that the manner in which the questions are posed must be very important. She asked whether the questioners have been trained to ask the questions in ways that are non-threatening. Mr. Marrero said that this is a good point, particularly since the doctors do not want to ask the questions. This is why, Mr. Marrero said, he is reviewing the responses to see which providers do not elicit responses from inmates. Ms. Potler said that there is no question but that we all are seeking to reduce suicides in the system, and that everything is being done with good intentions. She said that the original intake form - without the supplemental questions - already is a very good form with good questions that elicit important information, such as "have you ever tried to hurt someone"? She noted that physicians are trained to see how people respond to questions, including whether they make eye contact, and are sensitive to answers that properly trigger a mental health referral. Ms. Potler said that Mr. Marrero correctly noted that other people ask inmates the same or similar questions. She said that providers need to get as much medical and mental health information as is possible, and that providers already face considerable pressure to promptly perform intake examinations within court prescribed time frames. Mr. Marrero said that since the questions are asked at the end of the intake exam, the providers are able to elicit the important information mentioned by Ms. Potler. Mr. Wolf said

that asking the questions can adversely affect an inmate's willingness to return for treatment should events in the jail, or the inmate's case, or in his family situation, place him at greater risk for self harm. Mr. Marrero reiterated that there was no decrease in sick call, and CHS will continue to monitor the process. He added that the question "have you been offered a plea?" elicits information not acquired by the original intake questions. Mr. Marrero said that if one suicide is prevented - even if there is some drop-off in sick call usage - the trade-off will be worthwhile. Ms. Potler concluded by noting that if a clinician obtains information about an inmate's charges, particularly murder or rape, the information may influence how the clinician deals with the inmate/patient. Mr. Marrero said that the original intake form already contains a similar question, "Are you accused of a crime of violence (assault or rape)?" He added that in mental health encounters, inmate-patients often say, "I did this to this person." Thus, he concluded, the information already is in the chart. Ms. Potler responded that the information is in the mental health section of the chart, not the medical section. Mr. Marrero responded that the charts are integrated, and Ms. Potler replied that the charts she reviews typically separate the medical and mental health notes. Mr. Marrero said that he doubts that doctors who have devoted their lives to caring for a population of people who inherently are charged with doing bad things are going to be influenced by knowing what a particular inmate-patient is accused of having done. Ms. Potler responded that there is a difference between knowing and not-knowing.

Mr. Cruz noted the confidentiality requirements are different for medical and mental health records. He noted that mental health records are protected more stringently than medical records. He said mental health records cannot be subpoenaed, and can only be released with the consent of the patient. Mr. Cruz urged therefore that medical and mental health records be maintained separately. Mr. Marrero said that this used to be the case, but that he felt that medical providers needed to be aware of mental health issues, and vice versa, to facilitate accurate diagnoses and treatment. Now, he said, all medical providers can see the mental health notes of the patient they are treating. He said he would raise the issue with HHC's General Counsel. Mr. Kreitman ended the discussion by saying that he expected there would be a continuing dialogue on this subject.

Mr. Kreitman asked about inmate deaths due to natural causes. Mr. Marrero said that there have been 20 deaths thus far this year. He said that there were 28 deaths to this point last year; and 26 the previous year.

Mr. Patrick asked about the new task-based mental health discharge planning model that was supposed to begin in July. Mr. Marrero said that CHS assumed responsibility for discharge planning and designed a different delivery model, which is not yet fully operational. He said that separate units will be responsible for individual tasks. Mr. Marrero said that, for example, one unit will be responsible for all inmates' benefits applications. He said that the new system will be fully operational very soon, and will involve collaboration with the vendor, because discharge planning will begin with the first patient-provider encounter. Mr. Patrick asked about the 40% refusal rate. Mr. Marrero said that inmates sign a refusal form. He said that by pressing the inmate at each encounter with a provider to reconsider his/her refusal, the refusal rate should decrease. He added that 15% of the refusals are from inmates who misunderstand the purpose of a discharge planning meeting, and refuse to participate when they learn they are not going to be discharged immediately.

Mr. Cruz asked whether a doctor, who examines and treats an inmate who has been

involved in an altercation with another inmate or staff, takes a full statement from the patient as to what transpired. CHS Medical Director Dr. Patrick Brown said that a physical examination is done and the findings are recorded, including whether any diagnostic tests are to be performed. He added that the inmate is asked, "What happened?", and a complete assessment of the patient is done.

A motion to renew all existing variances was approved unanimously. Chair Kreitman adjourned the meeting at 2:08 p.m.