

# **INDEPENDENT REVIEW PANEL MINUTES**

February 28, 2008

**LOCATION:** 140 West Flagler Street, Conference Room 908  
Miami, Florida 33130

## **PANEL MEMBERS PRESENT**

Julia Dawson, Esq., Chairperson  
Michael Band, Esq., 1<sup>st</sup> Vice-Chairperson  
Jean-Robert Lafortune, 2<sup>nd</sup> Vice-Chairperson  
Doris Shellow  
Moeiz Tapia, Ph.D.

## **EXCUSED ABSENCES**

Jorge Reynardus  
Julie C. Ferguson, Esq.  
Glenn Falk, Esq.

## **ABSENT**

Josie Perez Velis

## **PANEL STAFF PRESENT**

Eduardo I. Diaz, Ph.D., Executive Director  
Kristin Anderson, Conflict Resolution Specialist  
Anna Sidan, Conflict Resolution Specialist

## **AUDIENCE:**

MDCR: Chief Mary Ann Puig; Investigator Danilo Haynes; Captain Edwin Cambridge

Civilian Investigative Panel (CIP): Don March, Janet McAliley

General Public:

Vera Institute: Allison Hastings; Michela Bowman

Complainant: John Dunn

**Agenda Item #1) Call to Order.** Julia Dawson called the meeting to order at 2:03 p.m. and asked staff to call roll.

**Agenda Item #2) Approval and adoption of the minutes from January 24, 2008.** Doris Shellow moved to adopt the minutes. Michael Band seconded. The motion passed unanimously.

**Agenda Item #3) IRP Complaint A 2007.012 Dunn vs. MDCR.** Mr. Dunn stated that MDCR suggested that the guards, whom he identified as subjecting him to mistreatment, were not present at the time of his allegations. Mr. Dunn stated that there were three guards present; however, only Officer Garcia was wearing proper identification. Mr. Dunn also reported that there is abuse taking place on the 9-C wing, and he recommended that MDCR change their policy.

## **The Photos**

Mr. Dunn reported that he has concerns regarding the photos that were taken while he was incarcerated. Mr. Dunn had in his possession a copy of the SOP which directs what should take place when an injury occurs. Mr. Dunn reported that at the committee meeting on September 17, 2007, Dr. Diaz questioned Chief Puig regarding the pictures.

Dr. Diaz reported that the originals have been lost; however, copies were still available. He stated that the pictures were taken after the CS spray incident. Dr. Diaz offered to show Panel Members copies of pictures.

Chief Puig reported that Uses of Force Reports are prepared by staff. The facility keeps a copy and the originals are supposed to go through the chain of command and eventually to the Internal Affairs Bureau. According to Chief Puig, the reports in this case did not follow that procedure and were not received by Internal Affairs. Internal Affairs was not aware of Mr. Dunn's case until two years later. When IA went to retrieve the reports, only copies were available. The persons who had handled Mr. Dunn's case had already retired; therefore, there was no one held accountable for what happened to the originals.

### Hot Water

Mr. Lafortune questioned Mr. Dunn about the hot water incident and read verbatim Mr. Dunn's statement where he said, "After he came out of the cell, they placed him under hot water, almost scalding him." Mr. Dunn stated that after he was sprayed with OC gas, he was taken to the shower. According to Mr. Dunn, when he turned on the water, the water was hot.

Chief Puig commented that by law, Corrections can only have tepid water in the facilities. She reported that one of the complaints of the inmates is the lack of hot water.

### Injuries

Mr. Dunn commented that the department was aware of his injuries. Mr. Dunn reported that at the September 19<sup>th</sup> committee meeting, Chief Puig stated that they in fact did not know when Mr. Dunn received his injuries and he did not receive his injuries on the 9-c wing. Mr. Dunn stated he was injured on April 29<sup>th</sup> and he was given medical attention twelve days later on May 10<sup>th</sup>. He reported that he saw a lot of misconduct and negligence by the department.

Chief Puig commented that at no point did the department suggest that the injuries did not happen in Corrections. She reported that the department does not know when the injuries took place. Mr. Dunn's injuries could have happened when Mr. Dunn was arrested, at the MDPD station, or during use of force incidents in jail. Ms. Dawson inquired about Mr. Dunn's injuries that were diagnosed on May 10<sup>th</sup>. Chief Puig responded the use of force incident occurred between the time Mr. Dunn arrived to MDCR and the May 10<sup>th</sup> date that his injuries were recognized and documented. Ms. Dawson asked MDCR how those injuries could be accounted for.

Investigator Haynes reported that Mr. Dunn came to MDCR in a psychotic state of mind. Before Mr. Dunn arrived to MDCR he "beat up" an inmate who was sleeping. According to Investigator Haynes, the MDCR psychiatrist found that Mr. Dunn was in a state of mind that required medical staff to sedate him.

Chief Puig commented that the psychiatrist felt that Mr. Dunn was not in any condition to leave the jail to go to Ward D. The appointment to go to Ward D was made when medical staff felt Mr. Dunn could be transported without disruptive or aggressive behavior.

### Discussion of Committee Recommendations

1. That MDCR review its policy on the use of OC spray on psychiatric inmates and prohibit the use of OC spray to gain compliance with an order, given the absence of inmate violence. The recommendation passed by a 3-2 vote.

2. That MDCR procure software that would facilitate the timely documentation, and distribution, of Use of Force Reports and the preservation of high quality digital photographic evidence. The recommendation passed by a 5/0 vote.

3. That the Panel conclude the complaint. The recommendation passed unanimously.

#### Discussion of Committee Findings

1. Force was used three times to enable psychiatric staff to inject Mr. Dunn. The file does not document that Mr. Dunn was aggressive prior to being handled in preparation for the injection.

Incident #1 Mr. Dunn became aggressive as he was being escorted from his cell to the table, to which he would be handcuffed prior to the injection. He was wearing handcuffs at the time.

Incident #2 Mr. Dunn was in his cell when ordered to the door to be handcuffed. He was “calm but non-responsive to verbal commands.” Four officers rushed into his cell and held him until the injection was administered.

Incident #3 Mr. Dunn was ordered several times, over a period of about 30 minutes, to place his hands through the chow to be handcuffed, so he could receive an “injection due to his violent behavior.” He refused to comply and OC spray was deployed.

The finding passed by a 5-0 vote.

2. The use of OC spray to administer an injection for violent behavior, to a man, which was not violent at the time, is not reasonable. The finding passed a 3-2 vote.
3. All of the pictures taken of Mr. Dunn following the use of force incidents are missing from the MDCR File. Department policy requires that the photographs be attached to the Incident Report. There are black and white photocopies of the pictures; however, the quality of most is very bad, making the photocopies of minimal value for determining Mr. Dunn’s injuries.

The finding passed by a 5-0 vote.

- 4 Mr. Dunn was injured while in MDCR custody, however the evidence does not substantiate that those injuries were the result of excessive Use of Force.

MDCR records document that Mr. Dunn was subjected to Use of Force two times on April 27, 2004 and once on April 29, 2004. The only injury to Mr. Dunn, documented by MDCR, was a small laceration on the nose.

JMH medical records, dated 5/10/04, document that Mr. Dunn suffered a “conjunctival hemorrhage to his right eye. He had “multiple contusions” and “minimally displaced fractures of the left sixth and seventh anterolateral ribs.”

The finding passed by a 5-0 vote.

**Agenda Item # 4) IRP at-large appointment vacancy decision.** Dr. Diaz reported that Julie Ferguson's term expires in February 2008 and she is willing to serve another term. Mr. Tapia made a motion to re-appoint Ms. Ferguson. Jean-Robert Lafortune seconded the motion. It was passed unanimously.

**Agenda Item # 5) Discussion: Letter from Consumer Services Director regarding IRP meeting suggestions.** This item was deferred until the next Panel meeting.

**Agenda Item # 6) Discussion: Police the Community Wants initiative.** This item was deferred until the next Panel meeting.

**Agenda Item # 7) Executive Director's Report.** Dr. Diaz reported that one of the Panel Members decided to run for judge and the County Attorney's Office opined that it is not necessary to resign from the IRP while campaigning for the position of judge.

Dr. Diaz passed out copies of agenda item 4-D, granting subpoena power to the IRP, which is on next week's Board of County Commission agenda for first reading, sponsored by Commissioner Jordan. Dr. Diaz mentioned that the language for the subpoena power is modeled from the City of Miami's Civilian Investigative Panel, which has had subpoena power since it was created. Dr. Diaz advised that in the first reading there is no opportunity for discussion or community input. He added that historically there has been resistance toward subpoena power for the IRP from the Police Union.

**Agenda Item # 8) Adjourn** Doris Shellow made a motion to adjourn. Mr. Lafortune seconded. The motion was passed unanimously.