

**HEALTH COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE
MINUTES**

A meeting of the Health Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York, on Thursday, September 6, 2012.

Members Present:

Legislator William Spencer - Chairman
Legislator Kate Browning - Vice-Chair
Legislator Sarah Anker
Legislator Ed Romaine
Legislator John Kennedy

Also In Attendance:

Legislator Wayne Horsley
Legislator DuWayne Gregory
Ben Zwirn - Assistant County Executive
Tom Vaughn - County Executive Assistant
Tim Laube - Clerk/Suffolk County Legislature
Craig Freas - Budget Review Office.
Michael Pitcher - Aide to Presiding Officer Lindsay
Paul Perillie - Aide to Legislator Gregory
Lora Gellerstein - Aide to Legislator Spencer
Ali Nazir - Aide to Legislator Kennedy
Bill Faull - Aide to Legislator Romaine
Bill Schilling - Aide to Legislator Anker
Daniel Farrell - AME President
Gregory Noone - Thursday's Child/Program Manager
Kerry Thomas - Thursday's Child/Office Assistant
Tracy Trypuc - Suffolk County Board of Health
Wanda Hughes - John J. Foley
Ray Bingham - John J. Foley
Mary J. Finnin - Registered Nurse
Jennifer Abrams - Register Nurse/John J. Foley
Patricia V. Kuss - Registered Nurse
Linda Morgan - LPN/John J. Foley
Nanci Dallaire - John J. Foley
Kathleen Reeves - John J. Foley
Eileen Coblens - League of Women Voters
Dr. Yvonne Milewski – Chief Medical Examiner
Katie Horst - County Executive's Office
All Other Interested Parties

Minutes Taken By:

Alison Mahoney - Court Stenographer

Minutes Transcribed By:

Alison Mahoney and Gabrielle Skolom - Court Stenographers

*(*The following testimony was taken by Alison Mahoney and transcribed by Gabrielle Skolom - Court Reporters*)*

*(*The meeting was called to order at 2:26 P.M. *)*

CHAIRMAN SPENCER:

Stand for the pledge to the flag. Led by Legislator Browning

*(*Salutation*)*

If we could remember -- in memory of the first responders who gave their life responding to 9/11, if we could have a moment of silence for their heroic actions.

*(*Moment of Silence Observed*)*

Okay. We're going to start with our Public Portion. I have some cards before me. The first one is Gregory Noone who -- with Thursday's Child will be the topic of HIV/AIDS and the Foley center. Greg Noone.

MR. NOONE:

May I enter, for the record, and for all the members.

MR. LAUBE:

Yes, sure.

CHAIRMAN SPENCER:

Good afternoon, Mr. Noone. You have three minutes, but I didn't start the clock yet.

MR. NOONE:

Thank you very much. Sorry for the delay. Good afternoon, my friends. The debate over the role of government rages all over our country. Although I do not speak today for or against an partisan (sic) opinion, I do speak today, as I have done so many times before, I speak for those without the privilege of power. I speak for those without the strength or capacity to stand before you today and ask that you remember people who are living with HIV and AIDS. For the privileged and the powerful, there is no debate about public health because there is no need to; there is no debate about access to healthcare nor are there are questions whether quality care can be found. For those who can afford it, care can be bought.

For the rest of us, the debate rages on. Where is the intersection between tax relief and public health? What good are public health facilities if no one could afford to live here anymore? So I won't speak to the cost to the County of the J.J. Foley Skilled Nursing Facility, but I can say with certainty that this County will be a much less desirable place in which to live without Foley. I ask that you hear me loud and clear. Foley is the only facility in Suffolk County with an AIDS designation by the New York State Department of Health. This designation is, quote, for the development of AIDS nursing facilities and an enhanced Medicaid reimbursement structure that allows for increases in nursing time, substance abuse counseling, AIDS medication, and medical care, unquote.

A few more facts from the State Department of Health. As of December 31, 2010, approximately 6,158 Long Islanders are living with HIV and AIDS. Long Islanders who are 45 years of age or older account for 63 percent of people living with HIV and AIDS in this region. As this population

continues to age and live much longer, the need for skilled nursing centers will also become greater. There are only a few scholarly studies on this topic; however, I have found one and made a copy for your records. I ask that the conclusion drawn from this study be taken into consideration by this Health Committee. Quote, this study indicates that large numbers of nursing homes are not providing specialty areas of the treatment of HIV and AIDS. As the lifespans of people diagnosed with HIV continue to increase, and as our nation's population ages, the prevalence of this disease will continue to grow among older people. As these people begin to require care for traditional reasons in long-term care settings, the long-term care industry will be required to deal with the comorbidity of HIV/AIDS among its populations. Will the supply of beds be adequate to meet the demand of the population of these people? How should this population be treated with their special needs? These are questions that need to be addressed and researched in more depth to prevent disparities in care and improve quality, and I personally could not agree more. I repeat, the J.J. Foley Skilled Nursing Facility is the only facility in Suffolk County with a New York State AIDS designation.

(Legislator Kennedy entered the meeting at 2:30 p.m.)

Private nursing facility operators have not sought an AIDS designation. Private nursing facility -- that this Committee cannot mandate that the potential buyers of Foley seek an AIDS designation. I remain unconvinced that our society has grown so callous that it is willing to jettison the weakest among us in order to save a few dollars. I am well aware of the financial situation in which the County finds itself. However, although I may be tilting at windmills, I remain convinced that the purpose of government is for the public good. There is common agreement in favor of public education, public safety, public transportation, public parks, public roads. I urge you today to maintain the public health in Suffolk County, to support our Department of Health in its vital mission of services to all of our residents, including the least powerful among us, including the residents of Foley, including the thousands of people living with HIV and AIDS, and I reject the intrusion of profit-making politics and call for the renewed support of our County health centers, our County nursing facility, and support for the public health system for the public good. Thank you.

*(*Applause*)*

*(*Legislator D'Amaro entered the meeting at 2:31 p.m. *)*

CHAIRMAN SPENCER:

Thank you, Mr. Noone. Appreciate that. Our next speaker is Ray Bingham who will be speaking about the Foley.

MR. BINGHAM:

I just want to say good afternoon to everybody being here. Figured I'd give you guys a couple of minutes to catch your breath, right, as I catch mine. Okay. I would like to start off by saying hi to everybody, right.

CHAIRMAN SPENCER:

Hi. How are you?

MR. BINGHAM:

Okay. Good. I'm pretty sure you guys remember me from many stages. You know, I perform here. That's what I think I'm doing. I come here each meeting, and I talk, right. Today, rather than go into the Foley scenario, I'm going to my scenario, right. My scenario and my love relationship with the County nursing home started at age 42. I moved out here to Suffolk County, no job, started in Foley with 39 cents in my pocket. No transportation. I walk every single morning for five days a week or six days a week, right, from Coram to Yaphank. Occasionally, I

get, you know, one or two rides, right. But when you walk 3:00, 4:00 in the morning, reality sets in. There's no doubt about it. I started in November, right? When you're walking in sub-degree temperature, reality faces you right in the face, right? My turnaround at Foley are -- the infirmary started -- about a month after I started, somebody brought a resident and dropped him off to our door: bags, clothing, everything, right? I said, *What is somebody doing to another person?*

But the infirmary didn't turn that person away. Frankie (ph) stayed in that infirmary until we traveled from the infirmary to John J. Foley. He passed away about two or three years ago, but you know that place, right, is not just a nursing home, it's not just a home, right; it's an institution. I'd like you people -- you know, let's treat it as such, right. I said it before at this meeting. In my department, right, we used to serve things like three kinds of meat every morning with our breakfast. We're down to maybe once or twice a week, right. The top person that was there that was making the top salary haven't been there since the new administration took over. They got rid of that person. They're saving almost \$70,000 on that person's salary. I used a figure the last time I spoke of \$35,000 savings in the dietary department. I was brought to the attention that that figure is more close to \$200,000, right. And if each department are saving the County so much money, right, what is the reason why all the departments put together plus the work of the County can't pull their socks up and pull this place together and make it work?

Like I said, my whole entire thing is that there's no way possible out here in Suffolk County you will find any nursing home, and I have been to a lot of them, right -- the senior citizens' complex that I live is the largest out here. I have heard stories, I mean horror stories, right, from different nursing homes, right. I have been to many of them. I know my time is up, but give me two more minutes, right. The bigger nursing home --

CHAIRMAN SPENCER:

I'm sorry. I can't give you two more.

MR. BINGHAM:

Give me 10 seconds, right.

CHAIRMAN SPENCER:

You do have another opportunity tomorrow. I know you've showed up for every one, and I remember the story you told the other night, too, so you are memorable to me.

MR. BINGHAM:

This morning, I witnessed again -- the Brookhaven Nursing Home is right across from where we live at. This morning, I noticed three new people inside that nursing home that were in our place. How in the God's name Foley couldn't have gotten those people? Tell me, right. You guys tell me. Thank you.

CHAIRMAN SPENCER:

Thank you. Our next speaker is Mary Finnin, representing: taxpayer, topic: health care.

MS. FINNIN:

Good afternoon. I'm also a retired public health nurse and a former HIV primary care coordinator for Suffolk County. And I want to say I echo the sentiments of the former speaker that was here, spoke first. Today, I'm going to address the issue a little bit differently. As you know, I have constantly opposed the sale and privatization of our health centers and health services in Suffolk County. I've also opposed the sale and privatization of John J. Foley. Nurses and other healthcare providers in the County jails have been laid off or their positions eliminated. That was supposed to save \$5.5 million; however, you're required to provide service 24/7 for the inmates. How is this funded? How much? What private agency was contracted to give this service? You know who's

paying? Isn't this a breach of contract with the former SCAME employees?

Next, the health centers. The County has given away the Elsie Owens Coram Health Center to HRH. You have a letter attached from the chair of the Brookhaven Health Centers listing the issues about services that are not being provided by HRH. They continue to be funded by the County while other health centers have their budgets reduced, their staff cut to a point they can't continue to provide the levels of service their clients need. Before any further action is taken away to -- to take away or give away or contract out any of our County health programs, I remind you, you have set a precedent with the HRH contract in Coram. The public employees in that clinic maintain their positions and benefits as State employees and their union representation by CSEA and PFF. Any action taken with any other health center or John J. Foley Skilled Nursing Facility should have the same protection for the current employees.

My goal is to protect the safety net of public services that we provide here in Suffolk. It will benefit all residents and assure that healthcare is available and is accessible to all who need it. I would tell you that that lovely picture at the bottom is a picture taken when they had the hearings at the Blue Ribbon Committee and they were trying to close down our clinics then. And they're still trying to use the health centers and healthcare in Suffolk County to fund all of the other deficiencies in the budget. It's got to stop. You've got a contract with the public and the Constitution of the County to provide the services to the people and the taxpayers. Thank you.

CHAIRMAN SPENCER:

We have a question for you, Mary. Legislator Browning.

LEG. BROWNING:

Hi, Mary. You know, the reason when the Elsie Owens Health Center was taken over by HRH and to do the federally-qualified health center, it has always been told to us that the service would be enhanced, it would be improved, there would be a better service --

MS. FINNIN:

Yeah.

LEG. BROWNING:

-- including dental. And you're telling me that, from what you're hearing, is service is not being provided the way it should be.

MS. FINNIN:

That's correct, and the letter attached from Gerri Walsh (ph) outlines some of the specifics.

LEG. BROWNING:

Right. I got her letter, and I did read it. I don't know if our Commissioner -- I know he's here -- if he received this letter. Did you get a copy of the -- copy of the letter, Commissioner, from Gerri Walsh? I'll certainly give --

MS. FINNIN:

I'll give him a copy.

LEG. BROWNING:

-- you a copy. Yeah, we should give you a copy. And I think it might be important for -- you know, because obviously if we're looking to do the FQHC or to consider, you know, working with anyone else to do -- to operate our health centers, I think it would be important for us to make sure that, you know, if we're going to move forward again with HRH to take over anything, we need to make sure that they're doing what they're supposed to be doing or what they said they would do.

And again, you know, if they're not, again, looking at the nursing home, a promise is made and maybe a promise is not kept, and that's my concern. So we'll certainly have -- I think, and what I'll make a request of the Chair, is that maybe somewhere, sometime soon, that we could have Hudson River come back in again.

CHAIRMAN SPENCER:

We can do that.

LEG. BROWNING:

And do a presentation as to what they are currently doing at the Elsie Owens Health Center, and I think we need to make sure before we do anything more, we should look at what they're doing.

MS. FINNIN:

Okay. At one of the former Health meetings, I did request that a 90-day review be done on what is being provided by HRH because questions were raised before that time.

CHAIRMAN SPENCER:

We have that request. As soon as we get through the budget season, they're on the agenda. We're going to get them back in here.

MS. FINNIN:

Maybe you should ask them now *(*Laughter*)*. Thank you.

CHAIRMAN SPENCER:

Thank you, Mary. Our next speaker is Tara Bono with the Citizens Campaign For The Environment.

MS. BONO:

Good afternoon, Legislators. My name is Tara Bono. I'm the program coordinator at Citizens Campaign For the Environment, and I'm here today to talk to you about an issue that is a high priority for Citizens Campaign for the Environment, and that is keeping pharmaceutical drugs out of our drinking water and out of our surface waters. Last year, we worked aggressively with Legislator Jon Cooper to pass legislation mandating that healthcare facilities in Suffolk County safely dispose of their pharmaceutical drugs that are unused or unwanted. The legislation passed this Legislature unanimously. I want to thank each and every one of you who did vote in favor of that legislation and had the foresight and common sense to see that that legislation was important for protecting our public health. The law is simple and straightforward. It simply calls for healthcare facilities to tell us what they're doing with unused pharmaceutical drugs. It requires an annual report on the first of the year detailing the healthcare facilities' disposal plan.

Well, we are here today because the County has willfully neglected to implement this legislation. Perhaps known or unknown to most of you, Health Commissioner Tomarken did meet with representatives from healthcare facilities and determined that this legislation need not be followed in the timelines identified in the law. As we understand it, after meetings with several legislators, and some of you, Commissioner Tomarken granted several filing deadline extensions. Not only does this appear to be illegal but has caused confusion and chaos surrounding the successful implementation of the law. In the most recent letter from the Commissioner to healthcare facilities, dated July 17, two different filing deadlines are listed: one in August and one in January of next year.

In another instance earlier this summer, representatives from Charles Mather Hospital were left with the impression that they must flush their pharmaceutical drugs, and they changed their policy to mandate that drugs are witnessed and flushed down the toilet or poured down the drain. This is a step in the complete wrong direction. The New York State DEC, Attorney General, and the U.S. EPA

have repeatedly advocated for not flushing pharmaceutical drugs. Let's all get this right. All healthcare facilities in Suffolk County must immediately file a report detailing their safe pharmaceutical disposal plans; if not, as says in the legislation, they are subject to a \$500 fine. That is the law of the County, and, Legislator Spencer, you remember last week, Adrienne testified at the Water Protection Committee that the Commissioner simply does not have the power to stop or delay this law. It's up to all of you to make sure it goes forward. CCE is deeply disturbed that this is being willfully ignored by the County and is requesting you, as Legislators, become engaged and swiftly reconcile this matter. We look forward to working with you and assisting in any way that we can, and we thank you for taking action to ensure this law is followed and our water resources are protected from future pharmaceutical contamination. Thank you.

LEG. ROMAINE:

Mr. Chairman, I have a question.

CHAIRMAN SPENCER:

Legislator Romaine.

LEG. ROMAINE:

Yes. We've heard of the damage that is being done to our drinking water by these pharmaceuticals. Adrienne Esposito came and lobbied us. We saw the value in that legislation, and all it was was a report that each healthcare facility -- nursing home, hospital, clinic, whatever -- would have to file with the Health Department on the method that they were using to dispose of their pharmaceuticals; correct me if I'm wrong.

MS. BONO:

Correct.

LEG. ROMAINE:

When was the date that that law was supposed to be implemented?

MS. BONO:

The original date for filing was January of 2012.

LEG. ROMAINE:

January of 2012. We all voted for it. We all saw the purpose in it. No one spoke against it from the Health Department. No one said, "This is inconvenient." No one said, "I don't have the staff or the bureaucracy to implement it." Now, I have sat here for a number of years, and I certainly sat here for every meeting in 2012 and every meeting of this committee, the Health Committee. I haven't heard anyone come forward to say, "You know what? That law that you gave us, we can't implement that. We can't do that."

CHAIRMAN SPENCER:

Legislator Romaine, we are going to ask the Commissioner to come forward.

LEG. ROMAINE:

I'm going to ask a question. Are you aware -- I'll ask that question, if I have to, because I want to get this out, because I would like Dr. Tomarken, when the public sector is over, to come and address this. I just want to respond to you, and I'll leave it at that.

LEG. KENNEDY:

Can I share something?

LEG. ROMAINE:

I did not know that this law was not being enforced. I was not informed. I'm a lawmaker of Suffolk County. I passed this law. My colleagues passed this law. I'm going to wait with great anticipation for Dr. Tomarken to tell me what happened. Hopefully, there is a story, because otherwise I have to say to myself, *This government isn't operating properly*. Thank you very much.

CHAIRMAN SPENCER:

Legislator Kennedy, we are going to debate this, so if you have a particular question or just a quick statement but...

LEG. KENNEDY:

I will make it very, very quick. And I'm sorry, I was out of the room. You're from?

MS. BONO:

Citizens Campaign for the Environment.

LEG. KENNEDY:

CCE, yes. So I spoke at length with Adrienne.

MS. BONO:

Yes.

LEG. KENNEDY:

As you may recall, we did do a brief suspension of the filing requirements based on a request by the downstate Nursing Home Operators Association for the opportunity to work with their drug disposal entities. They had a handful of suppliers, and I think one or two entities that deal with disposal. They asked for the opportunity to work out an arrangement that, actually, I think, some 100 or 150 nursing homes have now bought into, and the suspension, I believe, went out of effect in the middle part of June.

MS. BONO:

Correct.

LEG. KENNEDY:

Our last conversation with the Nursing Home Operators Association was that they were able to utilize the time that they had asked for to become compliant, and now we're preparing to go and file with the Health Department. So we will have that same conversation with Dr. Tomarken, because it was in the end of June or the beginning of July that their representative told me that they were 100 percent onboard. The hospitals, as you know, are specifically exempted from our ability to control the disposal process, and, in fact, we had quite a bit of back and forth about what the State requirements are, particularly when it comes to wasting narcotics. But that is what the -- part of the time period is, if you will, and we did pass a bill that gave a brief hiatus that, but then we fully expected that we should have filing by now. Thank you.

CHAIRMAN SPENCER:

Thank you. Thank you, and we are going to discuss this further in short length.

MS. BONO:

Great. We look forward to it.

CHAIRMAN SPENCER:

I'm sorry. Legislator Anker. I apologize.

LEG. ANKER:

That's okay. Tara, I just have a quick question. How was it discovered that St. Charles Hospital was flushing? Did they receive an e-mail, a letter? How did you find out? Who told them to flush these pharmaceutical medications?

MS. BONO:

I'm not sure how that information came out. I know that, I guess, Commissioner Tomarken had sent to all the hospitals a memo explaining the deadlines difference. That is a letter that I have with me. It is very confusing. There's two different deadlines. It did cause a lot of confusion between the hospitals.

LEG. ANKER:

So the best thing that we can do is just make sure Dr. Tomarken understands that this law needs to be enforced. That's the bottom line here.

MS. BONO:

Correct.

CHAIRMAN SPENCER:

Thank you. I appreciate it. Our next speaker, Jennifer Abrams on John J. Foley topic.

MS. ABRAMS:

Good afternoon. Thanks again for taking the time to hear from your core group of County workers at the nursing home. It's the same people that were fighting three years ago, four years ago, and we made it this far. We just, you know, really want to ask all of you to think with an open heart and mind about the future of Suffolk County -- the future of Suffolk County's weak and poor, disabled, those without insurance. You know, instead of keep on talking about our facility making money or not making money, the sole purpose of its creation was to take care of those who didn't have that. That's never going to go away. In fact, as time goes on. More and more people will have less. I mean, this is what we're facing.

What we're asking is that you would just -- if you are considering to keep Foley alive, a very small step would be to open Four South. There is a wing ready right now. We could open those doors tomorrow. You could contact Stony Brook, the local hospitals, and let them know that we have 15 Alzheimer's beds available for those who need total care. And I assure you that within a very, very short time, just as Ray said this morning, those beds will fill quickly. Now, they're not big moneymakers, but they're people who need care, and right now, they're sitting in the hospital, and it's costing more money to keep them in Stony Brook than it would to keep them with us. That's Suffolk County dollars.

I don't know what more to say other than, you know, we could break even if all those beds were open. If Four South were completely open, we would be able to achieve bed hold. Without bed hold, we'll never break even because when someone gets transferred to the hospital right now, we don't get paid for them. When we're at bed hold, if someone gets transferred to the hospital, the facility still gets paid. Right now, with Four South closed, which is what it has been since I think November, there's absolutely no way that we can break even, so we need you to really just take this small step. Open Four South, allow us the time to achieve bed hold, and then look at the numbers. Certainly, if Mr. Sherman is ready to come in there, he's going to be able to make money. Why can't we?

CHAIRMAN SPENCER:

Thank you.

CHAIRMAN SPENCER:

Thank you. Patricia Kuss, and on deck is Dan Farrell.

MS. KUSS:

Good afternoon. I'm Patricia Kuss, registered nurse of over 30 years; County worker, eight. I have another letter to read to all of you. I read one the other day, but I came across this next letter, which I think you would be interested in hearing about. From the County Exec's Office, subject: Looking Forward to Working Alongside You.

"Dear Fellow Suffolk County Employee: I am honored to work alongside you to serve Suffolk County residents. This morning, I had the opportunity to welcome employees to the Dennison Building as they came to work, and I look forward to traveling our County and talking with the men and women who are on the frontline serving the public."

And, by the way, this was dated January 3, 2012.

"As I sought this office and in recent weeks, you have likely heard me talk about the need for our County government to do, quote, more with less, unquote. Let me be clear about my meaning. I say this as someone who has the utmost respect for a government having worked alongside public sector workers for the past decade in Babylon, and we made our government more efficient and effective without laying anyone off. I say this as someone who has worked together with union leadership to negotiate contracts that were not only fair for workers but taxpayers as well. I say this as someone who negotiates with respect behind closed doors, never in the media.

"I also say we must do more with less, and we must root out waste because I believe so strongly in our mission. Think for a moment what it is that we do in County government. We ensure public safety; we maintain public health; and we provide a safety net for the most vulnerable members of our society.

"I look forward to working alongside you to help make our government more efficient and to make the best possible use of the scarce dollars we have available to us. Thank you for your service, and if you have an idea to make our government more efficient, please don't hesitate to share. Best, Steve Bellone."

(Applause)

CHAIRMAN SPENCER:

Thank you.

MS. KUSS:

I think that says it all. And to reiterate on what Mary said, we have to provide -- very important that we protect and provide the safety net and the services that -- for the community and for the taxpayer. Thank you again for your time.

CHAIRMAN SPENCER:

Thank you.

(Applause)

I remember you also from the other night out in Riverhead. We'll see you tomorrow. Dan Farrell, and on deck is Linda Morgan.

MR. FARRELL:

Good afternoon. My name is Dan Farrell. I'm the president of AME representing the workers at John J. Foley, and I'm here to speak against the sale of John J. Foley, IR number 1811. And basically, I believe that this transaction is so tainted and compromised and hasty that it needs further review, and as you all should have gotten from me a letter I sent to the County Comptroller Sawicki to investigate and make sure that all the laws and processes were abided by for this sale. My concern is the RFP process that was done approximately a year or two ago where there are other buyers who had submitted higher prices or willing to pay more for this facility and in the dire straits that the County is in right now, and when every dollar counts, why wouldn't they have been considered if they were offering more money to buy this facility? Why weren't they considered when, like I said, every dollar counts?

I also believe that the Mary Hibberd Law wasn't followed to the "T" for this. But again, I mean, I think what this comes down to is this deal is too hasty. It hasn't been vetted out. I think there are a lot of questions that are unanswered, and these hearings that are to be held, there's another one to be held tomorrow. I don't know how you can close these hearings or even vote on the sale of this or take it out of Committee here when the whole process hasn't been seen through and vetted out. But I want to speak to the mismanagement, as well, at the facility, As you've heard from some of the members who work there that there have been units that have been closed. There -- to my knowledge, there have been people who are trying to get into the facility and are told there are no beds available. Now, this to me sounds like something is really wrong with management over there when there's beds over there that are empty that should be filled and they're not being filled.

I've also heard the stories from the members that the collections are not being done properly because they don't have enough people doing the collections. I've been told that there's one person who works part time there and only comes in one or two days a week to try and make collections, so when you get right down to the finances of the place, it may not ever make money, but it's a service that's invaluable to the residents there, and for my members who work there, they work very hard; they treat those residents as family. And if this place were to be sold and they were to be put out on the streets, they would be devastated. The County itself, I don't know how they can afford to layoff or terminate more people that -- they're hardworking people. They contribute to the community; they contribute to John J. Foley; they contribute to the tax base here. And I just wish that you consider not approving this deal here and look into other deals that are presented before you, and, as always, my door is open. I'd be willing to sit down and discuss this with you, with the administration or whoever it may be or our new potential buyer, I would be happy to sit down and try and work out the best possible deal for the taxpayer as well as my members. Thank you very much.

(Applause)

CHAIRMAN SPENCER:

Thank you, Mr. Farrell. Mr. Farrell, I -- Legislator Browning has a question.

LEG. BROWNING:

Sorry about that.

MR. FARRELL:

That's okay.

LEG. BROWNING:

You know, obviously, there's been a lot of conversation. I know myself and Legislator Kennedy have had conversation with the County Executive before -- even before March, from the beginning of the year about having discussions with the union, you know, the contract and various issues. And I know that in the past, we had talked about the membership having signed a petition, 70 percent of them saying that they're willing to make concessions or work to keep the nursing home open and keeping it a public facility. Just out of curiosity, you know, in the event that there is a sale, they're still your members, and has there been any discussion with you or anyone from your union pertaining to the employees that if there's a transition, what kind of contract they're going to have? Are they going to be living on -- you know, are they going to be working on a Suffolk County contract, the contract that exists, with the new owner? Or is he just going to do whatever he wants? I'm just curious.

MR. FARRELL:

There's been no discussion with me or anybody from my board. There's been zero dialogue.

LEG. BROWNING:

So if this place sells, they don't even know what their salary or wages are going to be.

MR. FARRELL:

No, they don't.

LEG. BROWNING:

Okay. Thank you.

CHAIRMAN SPENCER:

Thank you, Mr. Farrell.

MR. FARRELL:

Thank you.

CHAIRMAN SPENCER:

Linda Morgan, and then on deck is Nancy Dallaire.

MS. MORGAN:

Good afternoon. My name is Linda Morgan, and I'm an LPN at John J. Foley. Two years ago, I also was a patient at John J. Foley. I had a freak accident. I broke my leg, and I ended up in the facility for rehab. And I've always said that this could happen to any one of us in a heartbeat, and it did happen to me, and that's where I went. Now, if they sell the facility, we don't know -- we were told we would have jobs, but are we going to have health insurance? Are we going to end up like the other patients that are there that have nothing? You have single parents with three kids that they can't afford COBRA for three or four months if we're even going to be offered health insurance. That's one of my concerns. My other concern is if the County Executive is looking to give away 14 acres of land, I would gladly take it, so if you want my name to give him, that's fine. Thank you.

(Applause)

CHAIRMAN SPENCER:

Thank you. Nancy Dallaire, and Kathleen Reeves is on deck.

MS. DALLAIRE:

Thank you. Good afternoon. Nancy Dallaire, food service worker at John J. Foley, where I have proudly served the residents who inspire me every day for six years. I have had the honor of

working alongside some of the most committed employees. They encourage me daily. I have watched as they sacrificed and served our community, some for 30 years. That's commitment. They deserve respect. This is why it has been heartbreaking to witness this County not recognize these services or acknowledge that dedication. But they have been the driving force for me to stand adamantly against any sale or closure of this Skilled Nursing Facility. And as a taxpayer, I have listened to the prospective buyer. I have continually heard over and over again that the proper documentation is critical. Training to properly process that paperwork is key. To have someone in the field efficiently moving this procedure along is very important. All sounds like simple solutions, but John J. Foley struggled. That EMR system may be functioning but is not fully operating. The staff does not have the time to be properly trained.

These overworked and under-appreciated professionals have a physically exhausting position already. It's not fair to add hours of paperwork to their strained schedules. There is no staff to send out into the field to raise awareness about all the services John J. Foley provides. And when they have been able to send someone out, they have found success, but as with all success with John J. Foley, it was short-lived. Listening to the County Executive again speak of the State running the County out of the nursing home business, yes, New York State was restructuring and encouraging some nursing homes to close or downsize, but that was to cut costs, reduce waste, and consolidate services. Many of those homes benefitted by the change and helped the area. Actually, John J. Foley implemented all of those recommendations. The only one not fulfilled was partnering with a neighborhood hospital, but as we have discovered throughout this ordeal, John J. Foley is unique. Long Island is unique compared to the rest of New York State, and this process was done cautiously and carried out thoughtfully.

I have nothing against anyone pursuing the purchase of our goldmine, but I must object to abandoning residents who have been counting on this County for decades. And I'm against leaving vulnerable citizens unprotected. And I will not agree with stripping this community of the safe haven that we have come to depend on. Remember, the private operators will not be obligated to open their doors to hundreds of neighbors in need or when the next Irene hits Long Island, and it troubles me that Suffolk County is so willing to take that risk. And was John J. Foley compensated for those services rendered last year? I know this is the Health Committee, but Public Safety should also be concerned about the sale. This facility and the parcel of land that's surrounded by County land, County farm and other vital County facilities, why would we look to privatize this piece of land? Security purposes alone, it should send red flags.

(Applause)

CHAIRMAN SPENCER:

Thank you. Kathleen Reeves and Lee Snead on deck.

MS. REEVES:

Good afternoon. My name is Kathy Reeves, and I'm really here for one purpose today. I'm -- I want to kind of show you why we have lost so much money over the years. We have on our residents -- at this present time, we have 170 residents. 93 percent are Medicaid; 4 percent are Medicare; 3 percent are private pay. Medicare -- Medicaid pays 2,000 -- \$290 a day; that's the average. We have 40 beds empty on Four South. That comes to \$11,600 a day that we're losing. It's supposed to also go up 5 to \$6 because of most recent CMI. That loss comes to \$4,234,000 a year. Our total census, not counting the HIV beds, is 252 beds. At that rate, we should be getting \$73,080 a day. Our census is 170. We're bringing in \$49,300 a day, and this is if everybody is paying. That's a yearly loss of \$8,679,700. There's also a \$63,000 Medicaid grant that's out there for use of the EMR if everybody is using it. The County is -- no, we're not all using it, but the County hasn't even applied for it.

We also have the only people using the EMR are the nurses. CNAs are not using them; the doctors and nurse practitioners are not using them; and they're not using them all in daycare. Every single day that those EMRs are not being used, it's money lost.

Now, let me get to daycare. Day-care is -- we're getting \$213 a day. At capacity, we would be getting \$12,780 a day. At what we average, which is 25 -- and this is based on five days, not seven -- we get 1,600 -- \$1,065 -- I'm sorry, \$5,325 a day. That's a loss of \$7,465 dollars a day. I didn't work that out for a year, but multiply that by three -- by 52 weeks and you can figure it out.

All right. We also have approximately \$70,000 equipment locked in a room on the fifth floor that has never been used. We also have equipment down in the basement that has never been used. We have bariatric equipment that has never been used. At one time, we had pediatric equipment. That was sent back because we never had pediatrics. All right. We also have a director working, a PT, who's a agency. I'm not sure what he's making, but it's got to be at least \$60 a day, yet we have a County worker who has a doctorate in PT, who should be the director, and making commensurate salary. We also have an LPN who used to be County who's now agency that sits in the admissions office for what? We're not admitting anybody. So this is basically a rundown of why we're losing so much money, and every bit of it has been created by Hauppauge, and the reason it's been created is because Hauppauge wants it.

CHAIRMAN SPENCER:

Thank you.

MS. REEVES:

I just have one more. Five seconds.

CHAIRMAN SPENCER:

I'm sorry. Your time's up, but Legislator does have a question for you, so that will give you a chance to respond.

LEG. ANKER:

Kathleen, I want to thank you and your colleagues for meeting with me yesterday, and it just sounds like there's so much potential at Foley, and there's a lot more value than what I've been led -- well, what I've been led to believe, if that's what you want to say. Thank you for putting some of the value into financial perspective, and I am reaching out to BRO to get more of a financial overview of Foley and what it would look like if it was full versus what --

MS. REEVES:

And managed properly. That goes hand-in-hand. It has to also be managed properly.

LEG. ANKER:

Managed properly, absolutely. Did you have something else you wanted to say?

MS. REEVES:

Yeah. The other thing I wanted to say is roughly on Long Island, in the next 10 years, one in six people -- now, one in six people are on Medicaid. All right. And also the \$17 million grant that's going to be used to pay down the bond, that's taxpayers' money too; as is the \$300,000 tax abatement that they're planning on giving the Shermans, if they buy it. The County is giving away a hell of a lot of taxpayers' money. That's it.

(Applause)

CHAIRMAN SPENCER:

Thank you. Mr. Snead.

MR. SNEAD:

Good afternoon, Legislators and Scott Horsley's younger brother. It's a private joke.

*(*Laughter*)*

D.P.O. HORSLEY:

He's kidding.

MR. SNEAD:

I had a bit of a discussion prepared, but I think the last question that was asked by Legislator Anker is probably the most important one here. You heard each of these individuals who work at Foley tell you that the facility is underutilized, and apparently deliberately so, under the Levy administration and now apparently under the Bellone administration as well. As recently as about two and a half years ago, the facility was in the black, and if the facility was in the black then, it can be in the black now. I ask each of you to ask yourself this question. If this facility were in the black right now, would you be voting to sell it? Does that make any sense? Because all these folks are asking you to do is put it back up for an RFP, let people come in and give you proposals to run that facility at its fullest extent, and make it work for you. Make it a revenue producer for you, even if it's revenue neutral, that's a win. There's an additional hidden benefit that this facility has that you haven't been talking about. You have adjacent vacant property. That adjacent vacant property is available for use with this facility for medical offices, for laboratories, for assisted living facilities, for physical therapy facilities, and this Legislature can lease that property out to somebody to manage, to develop, to run for the County, to make this facility a world-class facility.

If you sell this facility, though, that will never happen. The sale of this facility locks in a \$23 million dollar appraisal presuming that you accept that that's a legitimate number. Quite frankly, we think it's more, but let's presume that that's the right number. But you look at this facility, though, with the additional property available, and the ability not to have to worry about zoning. A developer doesn't have to come in and deal with the Town of Brookhaven -- which I have to tell you, I have dealt with. It's a long process. Chances are it will never be approved for a change of zone to allow these other facilities to come in and do this, but if it's owned by the County, you don't have to go through that process. You can contract tomorrow. Somebody can come in, break ground, start putting in those ancillary facilities, which are all necessary to the proper operation or to the present operation to a facility like Foley. The model for health facilities like Foley has changed over the years. It requires these ancillary facilities and you have the opportunity to go back out, say as people, *Look, if you can bring us a proposal that shows us you can utilize this facility in a better way, make money for the County, then we're happy to hear it.* That's all these folks are asking for. Yes, I represent AME. I'm interested in their jobs. I'm interested in keeping their jobs with the County, but don't kill me. Put that all aside. As a taxpayer and as a Legislator, if you can turn this thing into revenue neutral or revenue positive, that's where you should be looking. Would you be selling this facility if it was making money? That's the question you have to ask. And if you wouldn't --

(Applause)

-- then you need to go out and find out whether there are people who can do that. Mr. Zwirn, Ms. Calcaterra, and the Bellone administration want to fill a \$20 million hole in their budget. That's a wonderful thing, but that \$20 million hole has nothing to do with the Foley facility. It has nothing to do with throwing away an asset, which once you throw it away is gone. And by the way, nothing prevents that asset, once sold, from being leveled, turned into anything that this gentleman wants, and he will then have zoning approval to do it on that property but not anywhere else. Please, very seriously consider your vote here. It's important. Thank you.

CHAIRMAN SPENCER:

Thank you. There's a question from Legislator Browning.

LEG. BROWNING:

Hello, Mr. Snead. You know, again, going back to our 215 County Law, it says that property may be sold or leased only to the highest responsible bidder after public advertisement.

MR. SNEAD:

Yes.

LEG. BROWNING:

I'm not a lawyer. I know some of my colleagues are, and you are. And do you believe that we have adhered to that County law?

MR. SNEAD:

Absolutely not. I have reviewed the County Attorney's memo. I believe it to be woefully inadequate. I will prepare a memo to provide to you so that you can get at least one other attorney's opinion. I'm aware that Mr. D'Amato is an attorney and may have a position on this as well. The simple fact is this County cannot violate the General Municipal Law and sell off property willy nilly. What the County Executive's Office is asking you to do is, in this one case, forget the law, but if you can forget the law in this one case, you can forget the law in any case. What's to prevent any other sale that comes up before you from being manipulated the way the County Executive's Office and the County Attorney's Office is trying to do that? And if that's the case, if that can happen, then the State of New York's bidding rules, the State of New York's competitive bidding laws are meaningless for a County. Why should they be meaningless for a County when they apply everywhere else in the State? That makes no sense.

LEG. BROWNING:

Because we had an RFP sometime ago, and Mr. Rosenberg responded. He was the highest bidder; however, that one disappeared.

MR. SNEAD:

Yes.

LEG. BROWNING:

If the next highest bidder was approached, would you consider that we're compliant with that County law then?

MR. SNEAD:

I would think that would be more compliant. It would be a more legitimate process and I think one that would be upheld as long as the process that led to the solicitation of that bid was appropriate, and I don't think anybody has said it isn't. I will leave you with one other thought, though. You are in the middle of these Hibberd hearings right now, and last week, the public hearing, supposedly in front of the full Legislature, was closed. That process is absolutely backwards, and it's not just me making that determination. If you think about the reason for having four additional public hearings, it's to publicly inform the entire Legislature. Why you could then have the Legislature close the, quote, official hearing and then hold these hearings after the fact, I don't think works. It's not my words. It's your words. It comes out of a resolution passed by this Body in 2010 that laid out the procedure by which the sale of this particular facility would have to operate. And it very clearly states that you would have to bring that proposal from the County Executive's Office to this Body. It has to have all the reports and all of the information provided by the Hibberd Law before it comes to this Body. Well, that clearly hasn't happened. You then have to have the four Hibberd

hearings, and only then may you lay that proposal on the table before the entire Body for the entire Body's consideration.

This process is truncated. It's been jury rigged, and what is happening now by you going through this process here and then having a Hibberd hearing tomorrow is if you follow what the County Exec wants to do, tomorrow is the last hearing. You will be sucked in to the procedural screw-ups that they have already had. And I don't mean to be so guttural about it, but that's what's going on here. They've run through a system that has no precedent anywhere. Now, they're asking you to buy into it. All that being said, the substance of this is as follows: Would you sell this facility if it was making money? And if somebody can bring it to use so it makes money for you, why wouldn't you listen? Just hold another RFP.

LEG. BROWNING:

Thank you.

MR. SNEAD:

Thank you.

(Applause)

CHAIRMAN SPENCER:

We're going to continue this dialogue tomorrow here at 4:00, 4:00 p.m., so we'll -- you will have another opportunity to address this particular issue. Again, I appreciate all of those who have spoken so passionately. Again, I remember the faces; I remember your words; I remember your stories; they're not lost. And, you know, we're going to do our due diligence to try to address this very difficult issue.

I'm going to ask -- we have a presentation that we're going to get to, but there are three appointments, and we're going to take them out of order, and it will be very brief, and then we have a presentation. Is Joan Madarash here today? I'm going to ask if you would come forward. How about Diane Gaines? Is Diane Gaines present today? And last, is Michelle Santantonio here? These are -- I'm going to ask for a motion to take IR 1762 out of order. May I have -- I'll offer --

LEG. ANKER:

Second.

CHAIRMAN SPENCER:

Second on the motion.

LEG. ROMAINE:

So moved.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? Okay. And, first, motion to approve Joan Madarash for the Suffolk County Disabilities Advisory.

LEG. ROMAINE:

Second.

CHAIRMAN SPENCER:

Second the motion. Okay. On the motion, we have Joan Madarash who is here. If you would briefly just say hello and tell us a little bit about yourself and why you would like to serve on the Suffolk County Disabilities Board.

MS. MADARASH:

Sure. Good afternoon, everyone. My name is Joan Madarash. I'm very happy to be included on the agenda today. I am the president of a company called accessLinx and I am -- we are a multimedia production firm, and included in that is video and DVD production, website, including accessible websites. We do quite a bit of braille transcription. I'm also the newly-appointed Executive Director of School Business Partnerships of Long Island, and I'm proud to be -- I was just voted in by the board in June. I have been involved in that organization since the early '90s. I'm also the copresident of the Suffolk County Rehabilitation Council. I can't even remember how many years I've been a copresident. I was a president for about seven years a number of years ago and probably about another five years as copresident now. I'm also a board member of the New York State APSEE (ph) organization, and that is an organization that advocates for employment for people with disabilities. I have 39 years and counting of working with and for people with disabilities, and I believe I have quite a bit to contribute to this advisory board.

CHAIRMAN SPENCER:

We appreciate you taking time out of your schedule to be with us. We appreciate your ability to serve. I'll be supporting your nomination, and with that, I'm going to -- on the motion to approve Joan Madarash.

IR 1762, Approving the appointment of Joan Madarash to the Suffolk County Disabilities Advisory Board. (Co. Exec.) All those in favor? Opposed? Abstention? Congratulations. You are **approved. (5-0)**

MS. MADARASH:

Thank you so much.

CHAIRMAN SPENCER:

Thank you. You do not have to appear before the entire Legislature, but that approval has to go before the entire Legislature before it's official, okay? But you don't have to appear next Thursday. You're fine.

MS. MADARASH:

Okay. Thank you.

CHAIRMAN SPENCER:

The next is Michelle Santantonio (ph). Can you introduce yourself, please.

MS. SANTANTONIO:

Sure. Thank you. Excuse me. Michelle Santantonio. I'm the executive director for Long Island Housing Services. We are a unique agency that serves in Suffolk and Nassau, in Suffolk since 1969. I've been working with the agency since 1990. Our focus is fair housing advocacy and enforcement. We also do a lot of work related to tenants' rights and foreclosure prevention as well as reporting mortgage scams, but primarily my focus has been challenging illegal discrimination and investigations. My background includes not only the private fair housing agencies but I worked with Suffolk County in the Human Rights Commission from 1977 to 1990; and prior to that, I've had some government experience in Department of Social Services staff development as well as working in State psychiatric facilities that are no longer here in Central Islip.

We have had an increase in disability discrimination and the ability to enforce and facilitate fair housing for people with disabilities in a tremendous way in Suffolk County in particular. We've brought landmark challenges to a number of developers that have built multi-family housing without regard to accessibility guidelines of the federal government, and we feel we have made a big difference. At least 2,000 units have become now available for people with mobility impairments.

We have dealt with not only physical disabilities but mental disabilities as well, and I have been consulting on and off with the Office for People with Disabilities, and I think that it would be appropriate to have somebody from my office be part of the advisory committee. Thank you.

CHAIRMAN SPENCER:

And no better person than yourself. It sounds like you're very well-qualified, and again I thank you for your time and thanks for appearing before this committee. If there's no concerns from my colleagues, I'm going to -- we have a motion to -- I'm going to make a motion to approve Michelle Santantonio to the Disability Advisories Board. We have a second?

LEG. ANKER:

Second.

CHAIRMAN SPENCER:

Second. All those in favor? Opposed? Abstentions? Congratulations to both of you. We really appreciate, again, your willingness to serve. Have a wonderful evening. Thank you.

MS. SANTANTONIO:

Thank you. I would like to leave our brochure in your mailboxes.

CHAIRMAN SPENCER:

Sounds good. All right. We have presentation. One of my responsibilities serving on the Legislature's Health Committee as the Chairman is being a member of the Suffolk County Board of Health. And I have the privilege of working with the Commissioner and also the Deputy Commissioner with regards to just a number of important issues that relate to our County's health and one very important issue that's been brought before us that we have debated in this Body before is the issue regarding energy drinks, so there has been some new information, some new concerns that have been brought to light. And so I have asked Tracy who has put together, again, all of the information that is currently available, and I was just extremely amazed with the information that she provided, and I felt that it was important to get this information out to my fellow Committee members, so I have asked Tracy to give us a 10-minute presentation regarding the consumption of energy drinks. So, Tracy, thank you. I appreciate your patience, and I know that she had other things she needed to get to, so I think we got to your presentation as quickly as we can could.

MS. TRYPUC:

Thank you, Mr. Chairman. I will do my best to keep it to 10 minutes, and thank you, Committee Members. This is a presentation that I gave at the Board of Health, and I appreciate the opportunity to give that here. This was a literature review on the most recent research that is available on energy drinks, and there are health consequences in children and adolescents.

CHAIRMAN SPENCER:

You have copy that's been included, but it hasn't been approved, so it's not for distribution.

MS. TRYPUC:

Yes. Thank you. Energy drinks are caffeinated beverages that are designed primarily to increase the consumers physical endurance. If I skip ahead, it's just for time constraints, so I realize that you have a long day ahead of you. But you will see in the paper that I have given you all the information in the citations. They first appeared in the United States in 1997. The term -- the term "energy drinks" was created by the industry to refer to beverages that contain caffeine in combination with other ingredients; for instance, guarana, taurine, and B vitamins. Manufacturers claim that these drinks provide consumers with extra energy. Studies confirm adolescents are attracted to energy drinks due to effective marketing, peer pressure, and overall lack of knowledge

of harmful effects. Sales of these beverages have increased 240 percent from 2004 to 2009. Energy drinks are consumed by 30 to 50% of children, adolescents, and young adults. The term "energy drinks" is not recognized by the Food and Drug Administration or the United States Department of Agriculture. Caffeine content in energy drinks varies and can range from 80 milligrams to more than 500 milligrams. Some drinks contain more than one serving per container, so it is important to read the label. Not all drinks label the caffeine content, however. In addition to caffeine, energy drinks do contain the other ingredients that combine with caffeine to create a synergistic effect. Other ingredients include guarana, ginkgo biloba, sugar, ginseng, L-carnitine, and yohimbine hydrochloride. Manufacturers claim different health benefits that are unsubstantiated with scientific evidence. For instance, they might say that carnitine improves endurance and protects against cardiovascular disease or inositol can decrease triglyceride and cholesterol levels and lower the risk of cardiovascular disease.

Guarana, one of the ingredients, is a plant that is known to have one of the highest caffeine levels, and if you combine that with the caffeine already in the drink, that can be a dangerous combination. Energy drinks are categorized as nutritional supplements and avoid the limit of 71 milligrams grams caffeine per 12 fluid ounces that the U.S. FDA has set for soda. They also avoid safety testing and labeling that is required of pharmaceuticals. Some energy drinks contain as much as 75 to 500 milligrams caffeine per container, equivalent to 14 cans of common caffeinated soft drinks with the additional caffeine of the other ingredients not included. There also are the energy shots, which are considered low-volume beverages in the range of one to two ounces, and they have a higher concentration of caffeine per fluid ounce, whereas a 12-ounce can of cola can have a range of 34 to 54 milligrams of caffeine per ounce. There are some coffees with concentrations of -- comparable to energy drinks. They're usually consumed hot and more slowly, and coffee does not contain the other ingredients. This is an important thing to distinguish between energy drinks. There are over 500 brands of these drinks on the market. Americans consumed nearly six billion energy drinks in 2010 compared with 2.3 billion in 2005.

I may come back to this commercial, but there is a 5-hour Energy drink commercial out right now that is very misleading, and it's of a limited research study comparing -- saying that 3,000 doctors are saying that they approve this beverage, but actually it's comparing the low-calorie 5-hour Energy drink compared to the ones that contain sugar, and this is how they get you with the marketing. Emergency department visits due to the effects of caffeine toxicity have increased. Reports to poison control centers have also risen. Adverse effects include seizures and dysrhythmias, which are irregular heartbeats. A study of almost 1300 patients from two San Diego emergency departments in 2009 revealed adverse reactions reported in 429 of their participants; that's 33.5 percent. An Australian study reported that young adults and adolescents are attracted to energy drinks because of effective marketing, peer influence, and a lack of knowledge of the potential effects.

High sugar content can contribute to obesity and dental caries. Concerns include lack of research, lack of regulation, the potential physical effects on the overall well-being of the child, the potential physiological effects on individual body systems, the lack of education, and the marketing practices. Energy drinks are multi-component beverages containing, again, the caffeine, the guarana, taurine, B vitamins, and herbal derivatives. Children cannot really distinguish between the purported beneficial claims and the perceived benefits. There are studies that have recorded that some participants referred to obtaining an energy boost and that this was their major motivating factor for consuming these beverages. However, some participants revealed that to get that boost, they needed to consume five cans. Adolescents experience many changes during adolescence, changes in physical, cognitive, and social development. This is a time when they develop self-identity, self-perception, independence, and increased responsibilities. Peer pressure, experimental behaviors, hopes of improved sports improvement, and increased marketing influences adolescent decision-making. The study found that adolescents based their decisions on these perceived

benefits and previous experience of these energy boosts. Knowledge of energy drink effects on toxicity is poor among adolescents and young adults. One study concluded that participants did not understand the difference between a sports drink or an energy drink and they did not know what the ingredients were. Another study revealed that the subjects could not differentiate between the two.

Marketing to children. The energy drink market has focused on youth-related marketing themes, such as risk-taking, adventure-seeking, and rebellion. This is how they choose some of their names, like Monster Assault and Cocaine. One new New Jersey Police Department has placed an energy drink warning on their website to address this public health concern citing concerns about a link between consumption of energy drinks and risky and aggressive behaviors. There are three types of these drinks: sugar content, nonsugar content, and energy shots. They decided to come up with nonsugar content beverages because they felt that adolescent girls were not buying the beverages because they were concerned about gaining weight. Marketing includes sporting events, sports teams, the Red Bulls -- they're located in New Jersey -- athlete sponsorships, like the Miami Heat's Mike Miller -- product placements on the internet, Facebook, and video games oriented to children, adolescents, and young adults. In 2010, teams were exposed to 18 percent more TV ads and 46 percent more radio ads for energy drinks than in 2008.

Lack of government regulation. I'm just going to go through this quickly. But energy drinks are classified and marketed as dietary supplements, a subcategory of food, which is -- requires minimal regulation. There's no requirement for premarket testing for safety and efficacy. On July 1, 2011, Senator Dick Durbin introduced Senate Bill 1310, called the Dietary Supplement Labeling Act of 2011. It calls for labels to display batch numbers for tracings of adverse effects -- events and to clarify the difference between a food and health aid. Unfortunately, it has been before the Senate Committee on health, education, labor, and pension since then.

Caffeine is a natural stimulant. It can cause effects such as dizziness, insomnia, agitation, and restlessness. Energy drinks are diuretics, which can cause potassium loss. They also can cause cardiac arrhythmias. They can contribute to the effects of having interactions in the cardiovascular system. Pre-existing conditions, such as heart disease, high blood pressure, and seizure disorders are contraindicated for use. Energy drinks are not recommended for children, pregnant, or nursing women.

Caffeine toxicity. Fifty milligrams of caffeine can induce tachycardia and agitation. In 2009, a caffeine-related death from energy drinks occurred. The patient had an acute myocardial infarction and was most likely brought on by caffeine-induced constriction of a coronary artery. Data supports increased numbers of hospitalizations associated with the consumption of energy drinks, particularly in the vulnerable adolescent population.

Increased emergency department visits. Misuse by adolescents has been reported to regional poison control centers. Trend data that has been reported has shown a sharp increase in the number of emergency department visits involving energy drinks. There has been a tenfold increase from 2005 to 2009. I was able to speak with someone from the New York City Department of Health Poison Control Center and was able to get this data, if you can see it here. In 2010, you can see energy drinks, caffeine only, there were no reported incidents under five years old. 6- to 19-year-olds, they had three incidents and greater than 20, they had one. In 2011, under five-year-olds, they had 10 incidents of caffeine toxicity related to caffeine from the energy drinks. In 6- to 19-year-olds, it went up to fourteen. In greater than 20-year-olds, it went up to 20. In 2012, as of July 31, you can see that from 6- to 19-year-olds, from 14 up to 30. Fortunately, the number in under five-year-olds went down to four. They believe that was from accidental ingestion.

But these are alarming statistics. Cardiovascular effects include palpitations, chest pain, increased heart rate. Studies suggest that caffeine and taurine combined may synergistically decrease heart

rate initially after consumption, but then the heart rate returns to normal and then the blood pressure is increased. They say more research is needed. There also is some changes to -- to intraocular pressure. It's in the paper; you can read. The studies suggest that there is an interaction between activities of caffeine and taurine in the energy drinks to cause a significant reduction in intraocular pressure.

Dental caries and pediatric obesity. This is also of great concern in children and adolescents. There's concern about dental erosion and cavities due to consumption of energy drinks. This has been in the news recently. Energy drinks are acidic. They have a pH of three to four. A low pH is associated with enamel demineralization. Energy drinks contain sugar, which has been a leading cause of dental caries. The combination is concerning. Also, excess sugar has been linked to obesity. Energy drinks are considered high-calorie drinks. They have excess calories, as much as 200 calories or more in each drink. If consumed in amounts exceeding daily caloric needs, childhood obesity can result. There are also concerns about niacin, a B vitamin, and there is an ingredient in some of these drinks, and documented cases of acute hepatitis after consumption of energy drinks have been reported. There was one case of a 23-year-old girl and a 16-year-old boy. Niacin is believed to be the cause of the hepatitis. And there have been cases of renal failure. Caffeine acts as a diuretic and promotes fluid loss.

One more thing that's very important I want to point out is that sleep quality -- I know, I'm running long. I've got to cut this off. Adolescents need approximately nine hours of sleep per night. They're under a lot of pressure, especially nowadays with all of the school and the technology. When children have been asked why do they consume these drinks, the most frequent answer is for an energy boost. One of the studies shows that they're aware that they shouldn't be drinking them but they -- 20.6 percent reported drinking energy drinks on a daily basis. Poor sleep quality and quantity in adolescents is associated with mood disorders, exacerbation of asthma, and lower sense of well-being and poor school performance. The use of caffeinated drinks and media-related technology caused excessive daytime sleepiness. The study demonstrated that caffeine intake began after school hours and extended into the morning hours. 50 percent responded that they felt tired when driving, and those were of the students in the survey that had driver's licenses. 7.1 percent fell asleep at the wheel. Motor vehicle crashes are the leading cause of injury, disability, and death, accounting for two of every five deaths in adolescents aged 15 to 19. Multitasking and greater caffeine intake enable a pattern adversely affecting sleep quality, placing adolescents at risk.

CHAIRMAN SPENCER:

Tracy, let me do this. This topic is too important. This presentation is fabulous. You don't need to rush through it. I'm going to bring you back. You're going to come back on the agenda. Here's -- again, I'm going to sum this up. Why, in the midst of this conversation, why is this so important? I'm a member of the Suffolk County -- I'm an officer in the Suffolk County Medical Society. I've had pediatric cardiologists, also the American Academy of Pediatrics -- this is an issue that is causing genuine concern. Our Department of Health is aware of it. We have soccer tournaments that are directed towards children that are 9 and 10 years old that are being sponsored by energy drink companies. This issue has come before this Legislature in the past.

MS. TRYPUC:

Uh-huh.

CHAIRMAN SPENCER:

I understand that people have a right to make choices and government should not interfere with that. The energy drink issue is a matter of safety and protection and awareness for our children. There's a show, Tots and Tiaras, where you see them giving these -- what is it? Did I get the name wrong?

LEG. BROWNING:

Yes.

CHAIRMAN SPENCER:

But they're giving children energy drinks equivalent to 5, 10 cups of coffee and going out and performing. What people don't understand, just like with smoking and alcohol, whatever -- we have smoking laws but alcohol, we don't allow people to drive while they are intoxicated because they create an imminent public risk. Well, a child who takes an energy drink and runs out on a soccer field with 9 to 10 cups of coffee in their system, when their heart starts to race, they can go into a fatal arrhythmia and die. We're seeing this happen over and over again, so I want to act responsibly as a Legislator. The Department of Health has reached out to me as a chairman. That's why they're here, and we are going to address this issue. It's going to be very difficult, but we are going to have an educational campaign that we are going to address it, and we are going to bring the companies to the table. They did come in good faith and negotiate with us before we pass any -- that we have reached out to them. Tracy, you are going to come back before us. I do not want to you rush through this presentation. I know I am going to lose one of my Legislators to a plane flight. We're not going to have --

MS. TRYPUC:

I did send Lora the information about the Attorney General's Office.

CHAIRMAN SPENCER:

So this is a very important topic. As we get through our budget season, this will be before this Committee. I have the Commissioner, who also needs to leave, so we're going to stop the presentation right there.

MS. TRYPUC:

Thank you very much, Mr. Chairman.

CHAIRMAN SPENCER:

Thank you, thank you, thank you. I really appreciate you being here, and I'll give my colleagues a chance to weigh in on this issue but -- to address, definitely, the concerns of people who have schedules and the very important issues before this Body. We're going to move on. Thank you, Tracy.

MS. TRYPUC:

Thank you.

CHAIRMAN SPENCER:

Again, the work it took to get all the citings and everything, you did a great job.

(Applause)

I know that I have my Chief Medical Examiner who is here with regards to an issue that came up earlier today in Public Safety, and then we have our Commissioner who's waiting patiently who has an obligation. I have -- I'm going to follow up on those two issues, so I'm going to ask if Dr. Milewski will come forward, and, Doctor Tomarken, we'll get you right up also.

Dr. Milewski, earlier in Public Safety. We were addressing the issue of a quality assurance position, and you spoke very eloquently and gave us kind of the inside information. I do think we have some follow-up from the Executive's Office with concern to this particular position. So, Ben, and -- Tom and Ben. So I think the questions were with regards to this particular position, and I think, Tom, you had had some feedback for us. I thought it would be best coming from you, and we may be

able to kind of clarify the direction we're going to take on this issue.

MR. VAUGHN:

Yes. This afternoon, we spoke to Erick Askerberg over in the Health Services about why the associate public health sanitarians was the position that was used to offset the quality assurance position in the Medical Examiner's Office. One of the reasons was that grade compatibility, both are grade 28. We also followed up and found out that there are currently five filled associate public health sanitarians in the Health Department and three vacancies. Those vacancies have been since 2008, 2009, and 2011. These individuals, from what we were told, are supervisors. They're not the people who are actually doing restaurant inspections or any other type of inspections; and, in addition, the Health Department felt that there was a very low probability that the County Executive's Office would sign off on three SCINS to fill all three of these positions within a year, which is why they thought it was an acceptable offset to use for the public -- for the quality assurance position. We've also followed up with Margaret Bermel to make sure that there was adequate funding in the Medical Examiner's Office to cover the cost of this new position as well.

CHAIRMAN SPENCER:

I see Margaret is with us also. She agrees. Okay. (**Laughter**) So I think that it really addresses the issue. I didn't know, Dr. Milewski, if you had anything further to add. It looks like we have a Certificate of Necessity that's going to appear before the Legislature, and Legislator Kennedy has a follow-up.

LEG. KENNEDY:

I'll make it quick. Doctor, thank you for being here again. You and I have had the conversation about the QA person. I support him or her a hundred percent. There is an individual that you have in mind now that's actually going to step into this position?

DR. MILEWSKI:

In order to prepare for accreditation, we had to start doing the work several months in advance.

LEG. KENNEDY:

Which is completely understandable. That's fine, and I'm -- okay. Go ahead.

DR. MILEWSKI:

So, yes, we have somebody doing the prep who has an interest in staying on in the position but is undecided, so we're going with he will stay on, but if not, we're prepared to start, you know, canvassing outside.

LEG. KENNEDY:

Which is fine. I understand that. And now through the Chair, Doctor, Mr. Vaughn laid out some of the rationale, but I would like to hear from Ms. Bermel. Just the five filled associate public health sanitarians will continue to remain and one of the three vacancies is going to be converted over to this new position? But my recollection is that when we did our layoffs coming into 2012, every vacancy was whacked, so are these three of the voluntary retirees? How did these come about? We didn't end the year with any vacancies.

MR. VAUGHN:

When we spoke to Eric Askerberg in the personnel office, he was the one who informed us that there were three spots. Those three spots are unfunded. There is, however -- but they -- when you do the conversion, my understanding is that you need to remove one position, so they removed one of the unfilled associate public health sanitarians to convert it into the Medical Examiner's quality assurance position, and then the money that is in the Medical Examiner's Office will be used to cover the new position.

LEG. KENNEDY:

So -- okay. We take the 28 sanitarians, we roll to the QA, and then you have now, Dr. Milewski, you have sufficient surplus funds within your budget that are actually going to fund what this unfunded position was?

DR. MILEWSKI:

I've been advised that there is money in my budget to cover -- if this individual rolls in, if this resolution passes immediately -- we're talking about three and a half months of funding, approximately 15 -- 10, \$15,000, and then the position is part of my budget request for 2013.

LEG. KENNEDY:

Okay. If you will, Doctor -- you do a great job as far as the cadaver work. Can we get --

DR. MILEWSKI:

Thanks.

LEG. KENNEDY:

-- Margaret to tell us about the budget stuff, though?

CHAIRMAN SPENCER:

Margaret, would you mind joining us, please? Thank you for being here.

LEG. KENNEDY:

We should all kind of hold to what we do best, right? Margaret, can you tell me what's going on with the money?

MS. BERMEL:

Good afternoon. Margaret Bermel, Department of Health. That is correct, I can confirm what Tom Vaughn has just spoken to and Dr. Milewski as well.

LEG. KENNEDY:

She's got the surplus, dollar- and cent-wise, the position is being rolled over from a different area in Health?

MS. BERMEL:

Within the Department, correct.

LEG. KENNEDY:

She's not going to be decimating any of her other existing staff?

MS. BERMEL:

No. She will not be decimating any existing staff. No existing staff will be affected. She has sufficient funds in her 2012 budget to cover the cost of the three-to-four month salary expense for this particular position.

LEG. KENNEDY:

Okay. Thank you. Thank you, Doctor.

CHAIRMAN SPENCER:

Legislator Romaine.

LEG. ROMAINE:

Yes. Obviously, someone -- as someone who has advocated for some time for an independent Medical Examiner's Office, I believe the position of a deputy for a County this size is absolutely necessary. I'm happy to see that we were able to do it within the existing budget parameters, but I fully would expect that when the Executive releases his budget, in, I guess, two weeks and a day, that that budget will include the deputy as well. We need to ensure that our Medical Examiner's Office responds quickly. Just recently, I received a letter from all the East End supervisors concerning the Medical Examiner's Office that was addressed to Mr. Bellone, and I also know how important it is because I believe our Crime Lab is coming up for certification, if I'm not mistaken, within the next few months. Is that correct, Doctor?

DR. MILEWSKI:

That's the reason for the CN to be attached to this resolution, so we have the position in place for October.

LEG. ROMAINE:

So that when we do go for certification, we get certified, because, quite frankly, with staffing cuts and things of this nature the one thing that we don't want to see is having our Crime Lab have similar problems to the adjoining County to our west, Nassau County, that jeopardized several criminal convictions and investigations. We don't need that here in Suffolk. You know, there's a time to spend money and a time to save. Here, it's very important that this investment be made, and I would encourage the County Executive to ensure funding for this critical position be in the 2013 budget. I want to thank him for his efforts to ensure that this position is getting filled now with CN, and this is one thing that I will delight in working with our County Executive on. Thank you very much.

CHAIRMAN SPENCER:

Thank you. Thank you all very much for being with us. I appreciate it.

Commissioner Tomarken, would you join us? We've asked -- you're always here, anyway, but we -- I wanted to make an inquiry with regards to a particular issue. Some of you may have known last week, we held a water quality hearing with our colleagues in the Nassau County Legislature, Legislators Judy Bozworth were here and also Judy Jacobs. The issue is our aquifer and preserving it and the issues with regards to things that contaminate our aquifers. One is medications getting into the water supply. We had a very compelling presentation by Adrienne Esposito, who is the executive director of Citizens Group for the Environment. And I guess, Commissioner, there seems to be -- we wanted to do this for the record, and I know my colleague, Legislator Romaine, also had a question. I guess -- and looking at everything, there seems to be some concern with the particular legislation that requires nursing facilities to give us a plan of how they dispose of medications. And in many cases currently, it's acceptable practice to flush these medications down the toilet, which the concern is that they get into the cesspools and to the water supply, and in order for them to change their practice and comply -- the issue is that, you know, State law -- which you also as a Commissioner work under the State guidelines -- is an issue of whether or not they had to comply with this law. Now, the confusion seems to be -- and as I have the law right here in front of me, the resolution -- is whether or not if they come up with a disposal plan versus them implementing a plan where they don't flush any longer.

And so my understanding which is -- and, you know, I understand Legislator Kennedy's position where he extended it, but as I read the requirement, it says:

"All hospitals, facilities, nursing homes, and long-term facilities located in the County of Suffolk shall file with the Department of Health a written plan for the safe disposal of unused

and expired medications. Such a plan must establish a means by which the facility will dispose of such medications in an environmentally safe manner."

And I think this is where maybe some of the confusion is. Says that they must establish a means. It doesn't say that they have to do it, but we need to know what the problem is, and so that plan could be -- right now, it could state that what we're doing, we're flushing them down the toilet. What is our plan? Why has there been an issue in terms of having them comply with this law?

COMMISSIONER TOMARKEN:

The law requires that they submit a plan. Initially, the legislation called for them to submit it the first of the year. As Legislator Kennedy acknowledged, the nursing homes came to us -- came to him, said they needed more time. We were also waiting for the federal DEA hopefully to change their law, because you have two different classes of institutions. You have hospitals, which are class three institutions, which have their own pharmacy onsite and can take back their medications, especially their narcotics. And then you have class three A facilities, like a nursing home, the majority of which do not have a pharmacy; therefore, cannot take back medications; and, therefore, they have to be disposed of in some other manner.

So we gave a six month -- or the Legislature gave a six-month delay in implementing this bill till the end of June. We then gave -- and because nothing changed at the federal level, we had to continue to implement it as based on these current regulations. We sent out a letter saying they could submit their plan by August 16, and of the 64 institutions that are required to submit their plans, 51 -- about 80 percent -- have done so, which we are reviewing currently.

The problem comes that for class three A facilities -- nursing homes, places that do not have a pharmacy -- the two options are to take their unused narcotic or controlled substances to a State-regulated incinerator, of which there are about four on Long Island, or in this case the State is allowing them to flush until -- they're waiting for the DEA to change their laws, and we don't know when that's going to happen. We've been waiting over a year now, and nobody knows when and if that's going to happen; although, I think it will happen, but nobody knows when. So we're faced with the State saying to a facility, *You can flush narcotics, unused, excess narcotics*. That's not -- they don't in favor of that, but they have done that to allow facilities to be able to dispose of these drugs because many have said that getting to a DEC-approved incinerator is a difficulty. So that's the dilemma we're faced with right now.

CHAIRMAN SPENCER:

I understand what you're saying. I understand your dilemma, but still, even if they're allowed to flush by the State, and until that's clarified, why is it an imposition for them to submit a plan to tell us what they would do? Why is that a problem?

COMMISSIONER TOMARKEN:

80 percent have. We have 51 plans submitted. I have them in the back of the auditorium. We have them now. They have submitted plans. They are compliant.

CHAIRMAN SPENCER:

That's pretty good.

COMMISSIONER TOMARKEN:

Yeah, I think it is.

CHAIRMAN SPENCER:

So we should issue fines to the rest.

COMMISSIONER TOMARKEN:

Well, we're going to send out another letter.

CHAIRMAN SPENCER:

They're breaking the law.

COMMISSIONER TOMARKEN:

Well, technically, yes. But we're not here to -- we're here to get people in compliance. We're not here to punish people.

CHAIRMAN SPENCER:

Okay.

COMMISSIONER TOMARKEN:

And, you know, it's very possible that they missed the letter. You know, there's many reasons. But we have 80 percent compliance right now to the legislation, as it dictates, which is that they must supply a plan.

CHAIRMAN SPENCER:

Would you supply this Committee with -- because we have another water quality hearing in Nassau, and this is really an important issue that has just been pushed aside for a number of years, and the concern is really that there is, we feel, an imminent threat to the water supply. This issue has to be addressed. I can't stress that enough.

COMMISSIONER TOMARKEN:

Let me clarify something. Non-controlled substances: antibiotics, hormones, other medications should not be flushed, and the DEC, the State DEC, has said that flushing is not the way the people should be getting rid of these medications. There are take-back programs. There are incinerators that are available. It's the narcotics -- I should say controlled substances which probably is about 10 and 15 percent of the medications. That is the State's position on this. Nobody wants and nobody favors flushing, and it's really being applied to a very limited controlled substance category of drugs that the Bureau of Narcotic Enforcement at the State level controls.

CHAIRMAN SPENCER:

Legislator Romaine, then Legislator Kennedy is next.

LEG. ROMAINE:

Yes. I understand that it's a limited group of people, but I think we understand, and I think studies have shown that these pharmaceuticals are showing up in our groundwater, that they're posing a threat to our drinking water, and for the State to suggest that in the sole-source aquifer, which is unique in the State of New York, that flushing is a suitable method of disposal as opposed to insisting that some plan be filed with the Health Department, with your department, and that your department insist that instead of flushing things down, they be incinerated. It's not to punish people but it's to force compliance. Laws are adopted for one simple reason: because we need certain rules to govern our conduct and to protect society. We don't pass rules to punish people, but we do protect our society with rules that we pass and we enact into law. This was, I think, a good law because more and more in our water supply, in our bodies of water, we're finding when we test them, believe it or not, pharmaceuticals.

Now, I realize -- I take high blood pressure medication, but like every human being, you know, at some point I have to get rid of the waste in my body and flush it down and goes into -- in my case, a cesspool and not a sewer, unfortunately -- and yeah, that gets into the groundwater but when you are actually taking the drugs themselves and flushing it down, from large -- people who use a lot of

them, it's a problem. And I know with the nursing home, for example, even the County nursing home, you get a patient in, you know, has high -- I take three medications. They order the medication for the month. The patient leaves on the fifth day. What do you do with the other 25-day supply; you flush it down the toilet? I mean, I don't think so.

And what I'm saying is if we could get compliance with this, however you could do this, this law should be enforced even if it's used as a threat, as the club, the Health Department could probably work with health providers so that there could be, you know, one day a month that's incineration day. Save all your drugs, we'll send someone around collectively to collect from all the facilities and we'll incinerate them. I think it's a safer way to go. I think our groundwater, the bodies of water on Long Island, our tributaries, our bays all are reflecting. I'm told that there are fish that are changing, you know, to female and reproduction in some of these species because of pharmaceuticals are threatened. Now, think about that and then think about our drinking water because all of our drinking water comes from under this Island.

I'm concerned that it's a threat. That's all I'm saying. We passed the law. I don't think it's unreasonable. If it is unreasonable, Doctor, let me make this suggestion to you: Come and talk to us about this. Have the health providers talk to us about this. Make reason to argue, to convince us. I get this -- I get discouraged sometimes as a Legislator when we pass laws that we think do good. No one says they're doing bad; no one comes back to counter it; and yet they're not promptly enforced, even when an extension is given to the nursing homes, which it was. Legislator Kennedy indicated that they had -- the nursing homes had an extension through the end of June.

LEG. KENNEDY:

Yes.

LEG. ROMAINE:

Here it is, September. I mean, I don't want to put you on the spot, but I'm going to put you on the spot. What is your plan for implementing this law for the remainder of 2012?

COMMISSIONER TOMARKEN:

Well, the only -- the law says they're supposed to submit a plan that's ecologically-friendly. Number one, we have to review that and see what the plans are.

LEG. ROMAINE:

How many facilities in Suffolk that were supposed to submit a plan have not submitted a plan as of today?

COMMISSIONER TOMARKEN:

14.

LEG. ROMAINE:

14 out of?

COMMISSIONER TOMARKEN:

64.

LEG. ROMAINE:

Have you reviewed the other plans?

COMMISSIONER TOMARKEN:

We're reviewing them right now.

LEG. ROMAINE:

Okay. It sounds like compliance isn't that bad. So we only have 14. I assume you're going to tell this Committee you're going to work to get the other 14 into compliance.

COMMISSIONER TOMARKEN:

Yeah. We'll pursue these organizations and get their plans or --

LEG. ROMAINE:

Okay. How long does it take you to review these plans? And you know what? I know I'm asking you this question -- I almost feel bad asking you, and I will tell you why. Because of the staffing losses that you've suffered this year alone, staffing losses that I was not happy to see, particularly in the Health Department, how long will it take you with the staff you have to review the 64 plans that you have received?

COMMISSIONER TOMARKEN:

Let me ask my staff.

MR. MEYERS:

I would say about a month to really get some type of --

LEG. ROMAINE:

Okay. This is, what, September 6. You think you might be done -- I don't want to say by November 6 because they may have some special meeting. That date may have some special meaning.

(*Laughter*)

Election Day. But by November 6, you might be able to get this done.

COMMISSIONER TOMARKEN:

Right. There is another issue, first of all --

LEG. ROMAINE:

I'm sorry. Go ahead with the other issue.

COMMISSIONER TOMARKEN:

First of all, everybody agrees flushing is not the way to go for any medication, for anybody, whether it be private citizen or institution.

LEG. ROMAINE:

Right.

COMMISSIONER TOMARKEN:

The question comes down to can we enforce a law on -- for controlled substances where the State has given people -- they have that right to control it and they have also given them the right to flush, temporarily or indefinitely; let me put it that way.

LEG. ROMAINE:

I know you're a doctor and not a lawyer, and I'm definitely not a lawyer, but I would assume our legal counsel, who is a gifted lawyer, and/or the County Attorney would have raised these issues with us when this law was drafted and passed, I would assume. When Legislator Cooper -- because I cosponsored that law with Legislator Cooper, I would've assumed that those issues would have been raised when our counsel does a normal legal review of resolutions.

MR. NOLAN:

Well, there were discussions with Legislator Cooper when he was here about this bill. You know, sometimes Legislators listen, you know, and sometimes they don't.

(*Laughter*)

You know, problems with hospitals and nursing homes, what our jurisdiction is with them, and then you have the issue with the drugs, and so I think the Commissioner has taken the right approach using, you know, a soft approach to try to get the --

LEG. ROMAINE:

Friendly persuasion, like the movie from 1957.

MR. NOLAN:

Friendly persuasion. Maybe carrots instead of the stick is the best way to go to try to get compliance.

LEG. ROMAINE:

Okay. Thank you very much.

CHAIRMAN SPENCER:

Thank you. Legislator Kennedy.

LEG. KENNEDY:

All I was going to make reference to is just our sidebar conversation, that the, particularly with the controlled substance matters, it's actually the Federal DEA, I believe it is, which is the agency that's yet to actually promulgate the guidelines that will provide for an alternative for disposal of controlled substances other than what's going on with flushing. As we have just seen, our licensed healthcare professionals who dispense 99 percent of the medications anybody ever gets in a facility, our nurses have no choice but to actually act under the guidelines that they have been provided with, not that we want to pollute our aquifer, but we're kind of, like, between the devil and a deep blue sea here. So what I will do is draft a letter for us for next Thursday calling on Senators Schumer and Gillebrand to direct DEA to promulgate the rules giving our State agency the alternative to flushing. And I'll have that for the Body.

CHAIRMAN SPENCER:

Thank you. So I appreciate your time, Dr. Tomarken. You know, again, regardless of what is going on, you know, they still can just tell us what the plan is is what we're looking for, and I think that's important. One of our Twitter followers listening over asked a question I thought was reasonable. It was just said to me, was would it be possible for the facilities to bring their unused meds to the precincts for disposal?

COMMISSIONER TOMARKEN:

Potentially. The question is can the precincts handle the volume. The boxes are about the size of a mailbox. Theoretically, they could. There's no prohibition for that.

CHAIRMAN SPENCER:

That's something we should explore. We'll explore with them in terms of looking at the volume and if they can accommodate, but that might be a solution. I see some heads shaking out in the audience. But, Dr. Tomarken, thank you for your time; we appreciate it. At this particular point, we do need to get to our agenda.

We have tabled resolution ***IR 1200. That is to accelerate the evaluation and remediation of Brownfields in Suffolk County (Cilmi).*** That motion has -- motion to table.

LEG. ANKER:

Second.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? It's **tabled (5-0)**.

IR 1232, Amending the 2012 Capital Budget and appropriating funds in connection with Brownfields Site Rehabilitation (CP 8219) (Cilmi).

Same motion. Same second. All those in favor? Opposed? Abstentions? It is **tabled. (5-0)**

IR 1577, Adopting Local Law No. -2012, A Local Law to require public notification of sewage contamination in Suffolk County. (Romaine)

Public hearing was closed on --

LEG. ROMAINE:

I'll make a motion to approve.

LEG. KENNEDY:

Second.

CHAIRMAN SPENCER:

All right. We have a motion to approve.

LEG. BROWNING:

I think a few questions.

CHAIRMAN SPENCER:

Legislator Browning has a question on the motion -- I mean on the resolution.

LEG. BROWNING:

I'm not as much an expert on this as you on it but if -- and I guess maybe Dr. Tomarken may have the answer on this. If there is contamination and it needs to be reported, where does the DEC come in on this? Because I know we have the SPDES Program.

LEG. ROMAINE:

Right.

LEG. BROWNING:

And what level of contamination needs to be reported? What I'm asking is is that if Suffolk County Health Department now has to report contamination of a sewage treatment plant, what is the level of contamination that they would have to report? Because the concern is is when they report it, say, you know, we don't have many -- well, we do have some sewage treatment plants, but if a report comes that a sewage treatment plant in our districts, we're going to get the phone calls from our constituents. I'm afraid that they're going to be alarmed, that, oh, my God, what's happening, should I go out and buy bottled water, what should I do. And where is the State's responsibility in reporting, and I'm trying to figure out at what point in time does the County make the report and make the notification? Because I am afraid of alarmists going out there and being afraid and a lot of fear because people don't understand there's contamination but maybe it's not severe.

LEG. ROMAINE:

Well, this started out to address the 190 plus sewage treatment plants in Suffolk County, and then I had to amend this bill because, although you may be afraid, the State enacted it. This is State law for all municipal sewer districts. Okay? Their law is a little bit weaker than mine because there is no fine for failure to report in the State law, and it only deals with municipal sewer districts, but we have 157 non-municipal sewer districts, and of all the sewer plants -- of all the sewage treatment plants, the ones most likely to have problems with contamination from lack of maintenance tend to be private plants. And you heard testimony at the last general meeting that 67 of those or 60-some odd -- I forget the exact number. It was over 60 -- were not in compliance or had entered into a consent order which said they hadn't been in compliance at one time, and that was a concern.

This law is very similar to the State law. It requires -- I'll just read some of it very briefly. This is for private sewage treatment plants. There's about 153, 157 of them in the State -- in the County of Suffolk: Must report that any discharge from their plant of untreated or partially treated sewage to the Health Department within -- I'm summarizing -- four hours. The location of the discharge, the volume, the treated state of the discharge, the time and date of the discharge, the expected duration of the discharge, how long it might last, a description of the steps taken to contain the discharge and steps to remediate whatever environmental damage, and the reason for the discharge; what happened to the plant, how come it discharged this type of stuff? You know, within 24 hours of receiving this report, the Health Department will post this on their website. This is a public right-to-know law, but it also gives us, you know, some type of clarity to the general public and kind of compels these private plants to meet on a continuous basis the standards that they have to meet. Because I will tell you from my experience, probably in the neighborhood of at least a third of the plants have problems with compliance from time to time.

I'll give you a perfect example. In my district, in the middle of the Pine Barrens, right off Exit 71, as you guys who take the Expressway to the Legislature when we meet in Riverhead, you go about, oh, 20, 30 feet, if you make a right turn, you will be driving into a community known as Calverton Hills. That plant was built in 1972. It's been upgraded, but it's been under a consent order for several years, but they don't have the money to fix it, which leads to all types of problems with that plant. We're so dependent, and some people are such advocates of sewage treatment plants, we fail to examine the fact that some of these private plants don't meet standards, don't upgrade, and the Health Department is working around the clock, to their credit, and that's why I fought so hard to keep people monitoring these plants so that compliance and consent orders and things of that nature can be done to protect our groundwater.

If you think pharmaceuticals present a danger, this is, I think, in some ways a greater danger. So all I'm doing here is saying, Hey, look, if you have a problem, notify the Health Department, which you have to do, anyway, because the Health Department has a SPDES permit. They act in enforcing that on behalf of the State, but I want it posted on a website, and if you don't want to do that, there's a thousand dollar fine. So the State doesn't have a requirement for a fine, but the State does require every municipality -- just passed it. It was one of those things that the New York State Legal Conservation Voters made their top priority in this State this year. I'm -- my bill had everything, and then I had to take out the municipals. I just did private at that point, but I think the privates probably pose the greater danger in the sense that there may be violations going on.

LEG. BROWNING:

So let me ask you, though, does our Health Department have the ability -- I'm sorry to interrupt. Are they going to have the ability, like, if a private sewage treatment plant makes a report that they have some contamination and they get what the levels are and they -- do they have the ability to decide whether it's to a level that the public should be notified?

LEG. ROMAINE:

Obviously, you know, you spill a gallon of something, it's partially treated, and there was a problem with something. I mean, in the scheme of things, not a serious problem, but they know what the problems are. Their inspectors do. They, as you heard, they inspect these plants four times a year. As you know, the administration wants to cut that back to two. I don't think that's a wise thing. The States and Counties have standards in terms of discharge, so the County and State are going to enforce those standards. Those are the standards that they're going to enforce when they require notification. All the plant owners, who have to be licensed, know what those standards are. So yes, there is a standard for that.

LEG. BROWNING:

Okay, thank you.

CHAIRMAN SPENCER:

Legislator -- oh. I'm sorry. Did you have a question? Oh. Okay.

D.P.O. HORSLEY:

You know, the essence of your IR is perfectly good. I certainly understand it, and it makes a whole lot of sense to me. I just don't want it to be that there's any mistakes that the privates do not have to report to the Health Department; they do.

LEG. ROMAINE:

Oh, no, no, no. That's exactly -- all the sewage treatment plants --

D.P.O. HORSLEY:

If they have what's called a variation, I think it's called, they've got to report to the Health Department.

LEG. ROMAINE:

This is to post it.

D.P.O. HORSLEY:

All this does is to say, okay, you've got a variation to what is the norm, and you have to post it.

LEG. ROMAINE:

Not only do they have to post it. They have to post how much, when, where, how, why it happened, and the steps they're taking to remediate the damage, and that will all be available to the public. I think the public has a right to know, and that's why I'm doing this. Obviously, your colleagues in both the State Assembly, which your party has the majority, and the State Senate and the Governor agree with this concept because they enacted it for municipalities, but municipalities are usually better-funded in terms of running sewage treatment plants than some of these private operators. As I mentioned, just one little condo development in my community that has a plant that was built in 1974 that has been under a consent order for several years, and it's right in the middle of the Pine Barrens, and I'm like, Wow.

D.P.O. HORSLEY:

I'm pleased you have given me full responsibility for the Assembly and the Governor.

*(*Laughter*)*

But I just wanted to make sure that all it is is just a reporting mechanism. I've got to tell you, though, and it goes to Kate's concern, though. I've had these variation reports at the Bergen Point Plant, and I call them up, and I say, What is the matter with you guys? And what it was, they had a

heavy rainfall and there's just a spike on this little meter that they have. It really wouldn't -- you know wouldn't know one way or the other what it was

LEG. ROMAINE:

I'm glad you mentioned Bergen Point because the State will require Bergen Point now to comply. All I'm asking -- because the State law did not mention -- I was going to drop my law off if the State had included privates because it would have been done --

D.P.O. HORSLEY:

Okay.

LEG. ROMAINE:

-- but they didn't. So I kept my law. I just amended it to privates, and there is a fine if you don't do it.

D.P.O. HORSLEY:

Okay. So I'm just getting the full gist of this, they are covered. The non -- the private ones are covered; however, they have got to report to the Health Department.

LEG. ROMAINE:

They're not -- all sewage treatment plants report to the Health Department.

D.P.O. HORSLEY:

Right. They don't have to report -- they don't have to put it on a website and give it to the public, and that's what you want to do.

LEG. ROMAINE:

Under State law, they don't. Under my law --

D.P.O. HORSLEY:

Okay.

LEG. ROMAINE:

-- municipals and privates will be treated the same, and I think the privates, because they're smaller, independently run, there's more danger there.

D.P.O. HORSLEY:

This is the reason why I'm considering the consolidation of sewer plants in Suffolk County. That should be an end goal so that they are properly monitored.

LEG. ROMAINE:

As you know, I am willing to be very open to consolidation of the Water Authority and sewer operations, and I have said, Give me a report that shows it makes sense and I could support something like that, and I have said that publicly.

D.P.O. HORSLEY:

I'm glad we're of like minds, Ed.

*(*Laughter*)*

CHAIRMAN SPENCER:

I'm going to lose my quorum here. We have a motion to approve. Second by Legislator Kennedy. All those in favor? Opposed? Abstentions? It is **approved. (5-0)**

Next is IR 1762, we've already done.

IR 1769, 2012 Approving the appointment of Diane Gaines to the Suffolk County Disabilities Advisory Board – Group D. (County Exec.) She needs to appear. She's not present. Motion to table. Second, Legislator Anker. All those in favor? Opposed? Abstentions? Motion is **tabled (5-0)**.

*(**Excerpt from the September 6th, 2012 Health Committee**)*

*(*The following testimony was taken & transcribed by
Alison Mahoney - Court Reporter*)*

CHAIRMAN SPENCER:

IR 1811-12 - Adopting Local Law No. -2012, A Local Law authorizing the County Executive to execute agreements for the sale of the John J. Foley Skilled Nursing Facility (Phase II - Budget Mitigation).

LEG. KENNEDY:

Motion to table.

LEG. BROWNING:

Motion to table.

CHAIRMAN SPENCER:

All right. Motion to table. Seconded by Legislator Browning.
All those in favor?

D.P.O. HORSLEY:

On the motion?

CHAIRMAN SPENCER:

On the motion? Yes.

D.P.O. HORSLEY:

Yeah. On the motion. I just want to quickly -- it was made in the Public Portion of today, a comment, I believe by Attorney Snead that -- and I just want to make sure that this was corrected, because it really struck a chord with me when he said that the last time that the Foley Nursing Home was -- drew even and didn't have to transfer General Fund monies to it was two-and-a-half years ago. That's -- I believe that's what he said, if anyone remembers the exact wording on that, but that's what he said. So I called into BRO and asked, you know, exactly when was the last time that they were -- did not have to transfer monies, General Fund monies to the nursing home, and I just wanted to, for the record, say it only happened once in 1999. Last -- this year, of course, 2012 was 14 million that we have to transfer to it. So I just want to make that clear for the record, that some of this misinformation that has been thrown around the horseshoe doesn't get into the record and assumed as being truthful. Okay? 1999, last time.

LEG. KENNEDY:

Mr. Deputy Presiding Officer, what I will point out to you is is that roughly two years ago, two-and-a-half years ago is when Mr. Fine was actually our Administrator. The high point that we had at that point was 252 residents. And as a matter of fact, if you looked at quarter-by-quarter operations, our reimbursement rates were beyond what our actual operating costs were. And in particular, when you factor the IGT in, in actuality we had a revenue stream that was above what

our cost was.

So BRO may have spoken to a transfer, but again, you know full well that what happens is with the IGT operations, we straddle a multi-year reimbursement rate; so we can transfer, but we also capture. And this year that we're in right now, as a matter of fact, we captured over \$9.8 million based on a two-year IGT authorization and a \$1.8 million outright transfer for rebasing for Medicaid.

D.P.O. HORSLEY:

Okay. I think that from what -- this is just -- what I have here is just a General Fund transfer to the nursing home, and there is a considerable dip in 2010. I think that's what you're referring to.

LEG. KENNEDY:

Because the General Fund benefits from the receipt of the IGT, too.

D.P.O. HORSLEY:

That's right. And it came to 871 million -- 871,000 that was transferred to the nursing home that year.

LEG. KENNEDY:

Right.

D.P.O. HORSLEY:

That was the lowest since 19 -- since the year 2000.

LEG. KENNEDY:

My reason for making the motion to table today is predicated on the fact that procedurally we cannot vote this out because we still have an open hearing.

D.P.O. HORSLEY:

I wasn't arguing that. I just wanted to put this on the record because I wanted to make sure that there is not misinformation brought forth to this body so we can make an intelligent decision.

LEG. KENNEDY:

I know. And in deference to my colleague who's got to leave, you know, I don't want to belabor it. But I will say that many of the points that were brought to us today do still need to be vetted as far as use, as far as long-term placement, as far as projection with what's going on. Every one of us got {governing} and we all see what's happening as far as the graying of our population and what the spiking of numbers is going to be.

And finally, the legal premise that came from the County Attorney's Office as far as the validity of 1811; unlike this morning, this issue I will say I disagree with vehemently. I think the legal conclusions he came to are unsound, and I guess I'm going to have to rebut it and I'll share it with my colleagues as well.

D.P.O. HORSLEY:

Personal opinion is one thing; fact is another, and I just wanted to clear up the record.

CHAIRMAN SPENCER:

For the record, there is a motion to table. That motion has been seconded. That motion to table, and this is a unique situation. One of the Legislators has been recusing on this particular vote, so we have a Legislator -- there are four members; any business requires three votes. So there's a lot of different reasons that have been brought up in terms of the process, whether or not it's a valid -- none of those merits matter in this particular situation. If there is a 2-2 Legislature, no

business takes place. So the motion to table is not necessarily a recognition of the validity of any of these opinions one way or the other.

This will likely be discharged to the full Legislature next Thursday, we will continue with our hearings tomorrow. But we will, I guess, debate this issue for the next three hours and we would still come to the same conclusion that there is not the votes to approve or the votes to table or discharge, so it will likely be tabled regardless. In effect, if it's discharged to the floor, it makes the point moot. So that's just for everyone listening to understand kind of procedurally what's happening.

LEG. BROWNING:

Can I ask a question? You're saying it's likely to be discharged to the floor; you already have 10 signatures on the discharge petition? And we haven't even --

LEG. ROMAINE:

Before it's been tabled.

LEG. BROWNING:

Before it's even been tabled?

CHAIRMAN SPENCER:

No, I'm not staying that. I'm saying that there's a possibility that that would happen. Regardless, it doesn't matter as far as the focus of this committee.

LEG. KENNEDY:

But, Mr. Chair, on the record, I would say to you any attempt to circulate a discharge petition before this moment right now, in fact, actually would be invalid. Because otherwise, we might as well turn off our microphones and go home. We don't need committees.

(Applause)

CHAIRMAN SPENCER:

Absolutely. Absolutely. As far as my knowledge, there is no discharge petition with 10 signatures at this time.

LEG. D'AMARO:

Could I chime in on that, Mr. Chairman?

CHAIRMAN SPENCER:

Yes.

LEG. D'AMARO:

Just for future reference on that procedural issue, I'd like to ask Counsel if it's a requirement for a discharge petition that a bill first be tabled in the committee. It seems to me that you've -- my reading of the rules or my recollection of the rules doesn't require that. It seems to me we could even have a discharge before or after a committee meeting. Does the committee meeting have relevance to that?

MR. NOLAN:

No. A bill can be discharged either way and in any order. I mean, you could go get a discharge petition at any time, before the committee meeting or after the committee meeting, as long as it's filed a day before the General Meeting.

LEG. D'AMARO:

Okay.

CHAIRMAN SPENCER:

And I disagree, I don't think we should turn off our mics and go home if there was a discharge petition. We're taking a matter that comes before a committee of five people and that committee, due to politics or whatever, could -- the discharge petition allows that if there are 10 Legislators that feel that this issue should be brought out on the floor and debated before the entire body, it allows the people's business to continue, is my understanding. It's not to circumvent the committee process, but it does stop a small subset from being able to --

D.P.O. HORSLEY:

But nice try.

CHAIRMAN SPENCER:

-- to hold up business from taking forward, from moving forward.

LEG. KENNEDY:

I don't minimize the work of this committee at all, Doctor. And as a matter of fact, I think that we've always had a high standard. This has been the only committee that I've served on continuously since I was first elected in 2001, and actually you have been one of the most distinguished chairs that I've served under.

*(*Laughter*)*

So I do not -- no, I don't minimize nor in anyway belittle the work that this committee does whatsoever. I adhere -- I was here at a time prior to when Legislator Montano put the discharge process into effect. And as a matter of fact, at one time, we, as Legislators, had the ability to actually call for discharge on the floor. So the --

LEG. ANKER:

No.

LEG. ROMAINE:

Yes.

LEG. KENNEDY:

Yes, we did. Yes. As a matter of fact, that was routine. Lou, you remember that.

LEG. D'AMARO:

Yeah, and --

LEG. KENNEDY:

I mean, that goes back to '05.

LEG. D'AMARO:

And we changed that.

LEG. ROMAINE:

Sales tax on gas.

LEG. KENNEDY:

Right, there was a change specifically because we felt that for order and decorum, we wanted to be able to demonstrate that there was a majority of the body that had a feeling and a particular way to at least let a matter come to us for discussion purposes. But in this case, what I'm suggesting to you is is -- and I disagree with Counsel, just as most of us this morning in Public Safety disagreed with his opinion about the boating rules and regs. In this case, I disagree with him vehemently that we can go ahead and have action on a discharge petition prior to a vote of the Committee, whether it was to table or whether it failed or tabled subject. There's many, many different actions we can take in committee, and, quite frankly, I would characterize any discharge petition circulated or acted upon prior to this as void on its face.

LEG. D'AMARO:

Well, if I could just highlight the absurdity of that position, because --

*(*Laughter*)*

LEG. KENNEDY:

Feel free.

LEG. D'AMARO:

And John, you know, we're just talking about a procedural issue here.

LEG. KENNEDY:

Yes.

LEG. D'AMARO:

But the fact of the matter is if you read the rules, there's no requirement of any condition, precedent of a tabling in the committee immediately before the meeting. The fact is there's a deadline of when a duly executed and properly executed discharge petition needs to be filed with the Clerk and that deadline needs to be met. But the reason why I find the position you're taking somewhat untenable is you're pegging the validity of a discharge petition to when you actually put your pen to the paper, and so if I signed it the day before, I could still sign it the day after. So as long as I don't somehow try to withdraw my signature, I would say it remains valid.

CHAIRMAN SPENCER:

Gentlemen, I'm going to --

LEG. D'AMARO:

I don't want to go too much deeper with it, but --

CHAIRMAN SPENCER:

I'm going to end the discussion on it.

LEG. D'AMARO:

Well, it may become an issue later on in other legislation, and I just think that we should clarify that at some point.

CHAIRMAN SPENCER:

I think you're absolutely right, Lou. I appreciate, again, the experience of my colleagues on this particular issue, and I do appreciate their input.

With that, we have a motion to table that's been seconded.
All those in favor? Opposed? Abstentions? The motion is tabled.

LEG. ROMAINE:

List my vote as a recusal on that matter.

CHAIRMAN SPENCER:

Legislator Romaine is recusing. **Tabled (4-0-0-0-1 - Recused: Legislator Romaine)**

IR 1812, 2012, as a result, Repealing Resolution No. 213-2011, which prohibited use of John J. Foley's Name or likeness. Motion to table.

LEG. BROWNING:

Second.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? Motion is **tabled (5-0)**.

IR 1868, Amending the 2012 Adopted Operating Budget to accept and appropriate 100 percent State Aid from the New York State Office of Mental Health to the Long Island Home to perform Family Court Ordered Evaluations. Who doesn't want more money? A motion to approve.

LEG. ANKER:

Place on the Consent Calendar.

CHAIRMAN SPENCER:

Place on the Consent Calendar.

LEG. BROWNING:

Second.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? **Approved and placed on Consent Calendar. (5-0)**

I see no other business before this Committee at this time. We are adjourned.

(*The meeting was adjourned at 4:39 p.m. *)