

## **JOHN J. FOLEY SKILLED NURSING FACILITY**

### **OVERSIGHT COMMITTEE**

#### **Verbatim Transcript**

A regular meeting of the John J. Foley Skilled Nursing Facility Oversight Committee was held in the Rose Y. Caracappa Auditorium of the William H. Rogers Legislative Building, 725 Veterans Memorial Highway, Smithtown, New York on Friday, July 27, 2012.

#### **MEMBERS PRESENT:**

Dr. James Tomarken, Chairman, Commissioner of Department of Health  
Terry Pearsall, Presiding Officer Lindsay's Representative  
Kathleen Reeves, John J. Foley Skilled Nursing Facility Representative  
Kim Brandeau, County Executive's Representative

#### **ALSO IN ATTENDANCE:**

Legislator John M. Kennedy, Jr., Twelfth Legislative District  
Leslie Kennedy, Aide to Legislator Kennedy  
Robert Lipp, Deputy Director - Budget Review Office  
Kevin Carey, Administrator of John J. Foley Skilled Nursing Facility  
Nanci Dallaire, John J. Foley Skilled Nursing Facility

#### **MINUTES TAKEN BY:**

Donna Catalano, Court Stenographer

#### **MINUTES TRANSCRIBED BY:**

Denise Weaver, Legislative Aide

**(\*THE MEETING WAS CALLED TO ORDER AT 10:03 A.M. \*)**

**DR. TOMARKEN:**

Good morning and thank you all for coming. We will start out with the public speaking portion. Are there people who would like to address the committee?

**MS. DALLAIRE:**

Good morning, Nancy Dallaire. As of Tuesday I was still unable to find the minutes from the June 28th Oversight Committee and there seemed to be some confusion to when this meeting was being held. And I was just wondering why this committee meeting's not listed with the other committee meetings on their calendars.

But I do have a few comments from the May meeting. I was concerned to learn that John J. Foley was not included to receive upgrades and improvements along with other County facilities to the point that the State must threaten to impose penalties. It continues to disturb me to hear just how much the previous County Executive disregarded and disrespected this institution. It's under that neglectful eye that the cost to the County increased as the revenue for John J. Foley decreased as they failed to maintain the Skilled Nursing Facility. Those actions were irresponsible and someone must be held accountable for those poor decisions that have now endangered this County facility especially if we are to lose this health care facility and our services the citizens of Suffolk deserve to know why we failed. To often over the years I've learned that it was the direct decisions or the lack of actions by that previous administration that has cost John J. Foley and hindered the progress and growth of our services. The EMR system alone that Mr. Levy cancelled caused undo suffering for the facility and not to mention the incompetence that cost us the successful daycare program.

Despite those dark years of neglect John J. Foley's continued to provide the necessary care for our residents and this community while cutting costs and making sacrifices that will save the County money. These efforts must be acknowledged and the full potential of all the programs and services available at John J. Foley have not been realized. There are options left to explore and avenues that have not been pursued. Look to open a post traumatic stress disorder unit for our returning soldiers suffering these symptoms. Even if it's only temporary until something more permanent can be found. These attempts should first be made before considering any major merger. There are questions that must be settled and practices reviewed and revised. One example I see would be the nursing program. The County invests in their education and training of these qualified nurses and aides then the County lays them off, losing their experience and skills but then I learned they are -- the County hires them back through these agencies, which does cost the County more. I cannot believe that this was the intent of that program; how is that efficient? How does this benefit the County? It certainly does not benefit the residents. Has the Aid and Attendance benefit been investigated for our veterans?

**(Legislator Kennedy entered the meeting at 10:06 a.m.)**

Are there any other benefits that have been overlooked for the facility or the residents? Did the facility receive compensation for the services rendered during Tropical Storm Irene? These are just a couple of the changes that can offset the cost to the County saving our safe haven and securing these services for the citizens of Suffolk who are depending on them.

And I thank you for your efforts to find these solutions that we need to save John J. Foley.

**DR. TOMARKEN:**

Thank you. Is there another speaker? Any other people in the audience wish to speak? Okay. We will close the public session and begin the agenda. We received the final minutes from the June 28th meeting last night and distributed them by e-mail last night. There again, they're too big to

produce in hard copy so we'll have to have a motion regarding the minutes unless people have additions or corrections.

**MS. BRANDEAU:**

Motion.

**DR. TOMARKEN:**

Motion by Kim Brandeau, seconded by Terry Pearsall. All in favor? Opposed? Abstentions? The minutes of June 28th, 2012 are accepted. We'll now move onto our update from Kevin Carey.

**MR. CAREY:**

Currently our census today is 194 with seven in the hospital. The adult day-care is 45 registrants. The average monthly is 21.5; the Monday to Friday average is 24.5; the Saturday average is 11. Current staffing; 193 total staff at John J. Foley; 185 in the nursing home, eight assigned to day-care; 20 per diem. Nine employees out workers' comp; four employees on light duty.

Update on the capital projects. Electric; I spoke to the contractor yesterday, they drilled all the holes to run the wiring through the different floors. They're ordering the six panels, which are custom made, it'll take approximately six weeks. They anticipate the electric being done in eight weeks. Fire stop installation, Larry Stumpo from Department of Public Works, has submitted the actual installation to the Department of Health to make sure they verify it's correct for what they want before they start. He expects to get that back in a week and expects that to be done in a month or to be started in a month, it's a three year project, but he expects it be started in a month; I'm sorry.

The last meeting we discussed SSD, social work now has a list of all residents under 65 years of age, they are cross-tracking those residents to see who qualified for disability and you need two things; you need one of the disabilities combined with a work history to get SSD and they have that list and they're working on that right now.

We also discussed the new RFP coming up for the pharmacy. Larry Millman, our consultant has agreed to come to the next meeting on August 9th to assist us in getting questions from the outside pharmacies. I also discussed with him the possibility of putting a pharmacy in-house. He concurs with my estimate of the numbers. It would cost about 300,000 a year and we do not believe the savings would be 300,000 a year. He estimates owning a nursing home with about 600 residents could benefit from an in-house pharmacy and that we should still continue with an outside pharmacy. But he will be at the next meeting on August 9th; I believe it is.

**DR. TOMARKEN:**

-- schedule the meeting yet.

**MS. BRANDEAU:**

We usually schedule it at the end of this meeting.

**DR. TOMARKEN:**

Yeah.

**MS. BRANDEAU:**

The next meeting.

**MR. CAREY:**

No, not this meeting. There's an actual RFP question meeting coming up for pharmacy. He was coming to that meeting.

Survey. We just completed our annual survey. It was -- we haven't gotten the official report yet, we'll get that in one week. But the verbal report going out the door was seven to ten minor deficiencies. No harm. It's a very good survey. And that is it.

**DR. TOMARKEN:**

First I'd like to congratulate Kevin and his staff and Cathleen for doing a great survey. What I understand it was one of the best, if not the best surveys we've ever had. So hats off and thank you.

**MR. CAREY:**

Thank you.

**DR. TOMARKEN:**

And keep up the good work. Much appreciated.

**LEG. KENNEDY:**

Doctor, once we get the final -- whatever State Health gives us, you know, written approval or something like that, that is something that we should probably put into some kind of a press form. I'll work with you to do it. By that time Legislator Browning should probably be back and quite frankly I'll be happy to announce that the facility continues to come through, you know, and follow inspection with flying colors. It's good for the staff, it's good for the residents, it's good for everybody and it's good for us. I think we ought to get it out there. So you guys let me know and what we'll do is we'll bang something together and we'll do a release. Okay.

**DR. TOMARKEN:**

Okay, thank you.

Old business. I know there was a question about the quarterly reports at the last meeting and what Foley does is they do the first two quarters together so it'll be out in August. So it should be available for our next meeting.

**MR. PEARSALL:**

It's a change of policy because we always got the quarterly report.

**MR. CAREY:**

Yeah, I've actually -- I asked our Chief Financial Officer, Gary Vonatski, and he said -- told me no, we never did first quarter.

**MR. PEARSALL:**

I wouldn't argue the point, but Len Marchese always sat down with us for the quarterly report.

**DR. TOMARKEN:**

Any other old business?

**LEG. KENNEDY:**

Just one other thing, Doctor, I want to go back to. Kevin, so the electric looks like it's going to be wrapped up within -- certainly by the end of the year. And then that's something that we'll notify the State that we've now come in compliance with. They had requested that, I don't know, last year or something like that.

**MR. CAREY:**

It's actually from a 2007 survey.

**LEG. KENNEDY:**

Outstanding.

**MR. CAREY:**

I think in 2006, 2007 or 2008 -- I mean the 2007,8,9 we requested -- we were contesting the violation and then we requested extensions and this was the final date that it had to be started by.

**LEG. KENNEDY:**

Okay. So whenever the contractor's finished with installation and it passes our Public Works' punch list and check item, we're going to formally notify State Department of Health they we've complied. Right?

**MR. CAREY:**

Correct.

**LEG. KENNEDY:**

Or ask them to come in and eyeball it and concur whatever. We're going to do something that basically lets them know we closed the loop.

**MR. CAREY:**

Correct.

**LEG. KENNEDY:**

Okay. The other thing is with SSD. I don't want to micromanage but that is something that I've done for the last 15 years practice-wise and, yes, it's a simple rule of thumb you need two things. You need five out of the last ten years on the books employment for an earnings history and you need a physical or a mental disability that renders you incapable of performing SGA, it's called Substantial Gainful Activity. It means not that just couldn't do the job you used to do as a fireman or this that and the other thing, but you can't do any work whatsoever.

There is a certain element there though of, you know, if we had residents that had been in the facility three, four, five, six years and they came in with -- they were stroke victims, there was something significant and catastrophic. There is such a thing that's called a remote onset date. So you can relation back to the time when they first came provided that we have adequate medical records and all the other stuff to substantiate it so at first pass we may be looking to exclude people because they don't fit that five-ten or twenty-forty, but in fact, all things being equal that the (inaudible) were sustained a significant physical or mental malady and time has gone on where there's been no improvement, status quo or further deterioration. They may in fact be somebody that's a possible candidate.

I'll be happy to have a conversation with any of the social workers to talk about some of the particulars. All right.

**DR. TOMARKEN:**

Okay, thank you. Any additional old business? Any new business?

**MR. PEARSALL:**

Yes, if I could. We're continually reading in articles that are covered by the press that Foley is losing money, and millions of dollars in money. Just for the record, I want to put on the record that so far this year, in empty beds alone, we have lost \$3,124,671.48; that is based on the minimum Medicaid rate that was quoted here at one of our meetings. The number of the empty beds is based on the facts that have been presented to this committee.

I only can ask why we're not filling those beds. And we know one of the reasons it is, that in January and February Mr. Carey made a presentation and told us the staff he needed to do that, and yet the Administration, both in the County Executive's Office and in the Health Department, has not forced those SCINS to be signed so that we could hire social workers and all the other people that we need to market the place. I'll leave it at that.

**LEG. KENNEDY:**

One other item. First of all, thank you for putting that on the record, Terry, and I agree with you a hundred percent every time we see some kind of an article or we see a broader budget discussion in the reference that's it's a eight to \$10 million subsidy. I've always disputed it. I dispute it with the press. I dispute it with everybody.

But we should probably talk about something that's a little bit more proximate in time and that's the comments that Fred Pollert had made previously. Kim, maybe you can help us with this. My recollection is he said that we were going to need an interfund transfer to continue to fund our employees in the facility some time in September. Is that correct?

**MS. BRANDEAU:**

Yes. In addition to Fred I think Budget Review, Craig Freas, had also noted the fact that there was -- the way that the budget was presented this year a certain decline in the number of staff and employees in the budget and so expenditures and revenues were rached down to reflect that so that there are going to be shortfalls in some of your lines. And, so yes, there is going to be a shortfall. I don't -- I'm not able to tell you the exact size of it but we're looking at how to resolve that and find money to transfer in, make everything hole.

**MR. LIPP:**

That's correct. It's hard to say right now exactly what the number is, I'm not on top of that at this second. But the way we structure the budget was to have this public/private partnership a smaller model in the second half of the year then is reality right now. So, you know, forgetting about the size of the deficit the problem here we're talking about is appropriations to actually fund the somewhat larger operation.

**LEG. KENNEDY:**

So then what I'm going to ask is I'm going to ask for our August meeting that we have from BRO whomever has some more specific figures that we can speak to this about as far as what's going to be the requirement fund onboard staff through the end of this year. I'd also like to see at that point if we can have something that reflects the benefit that we're going to receive towards the end of the year by virtue of the 170 employees that we shed through the voluntary retirement. We have had people that have come out of the Health Department. We also had a significant number of layoffs in the Health Department as well. So while Foley is an enterprise fund, we do have some reflection, I guess, in the Health Department budget in a broader fashion so that should play upon whatever kind of requirements we have to fulfill payroll through the end of the year. I want to know the number. I want to get a handle on the number as quickly as possible and I want to address that number so that we can continue to fund through the end of the year.

One of the reasons that I say that is because certainly most of the folks in this committee and, Kevin, thank you and, Dr. Tomarken, thank you for the hospitality that's been shown for the national not-for-profit organization that has been out to see the facility three times now and whom I'm told will be presenting us with a white paper in the beginning of the August discussing a commitment for some near term operations that they'd like to become involved with quite quickly and a broader transition plan going over the next 24 to 36 months. I think it's critical that we have that in place and continuance of care for our residents through adequate staffing through the end of the year it's

going to be critical to that as well.

**MS. BRANDEAU:**

As far as the need for additional appropriations and revenues I will definitely let Fred Pollert know that you were inquiring today about what the status of it is and I'm sure we'd be happy to work with BRO on the numbers to see if we can come to same numbers.

**LEG. KENNEDY:**

Great, thank you. The only other item I would ask is last month we talked about the HEAL grant, Doctor and you referenced some conversations with State Health about the range of the HEAL grant and some dialog about maybe migrating what the original request was to some different idea. Has that progressed? Where are we at with the HEAL grant at this point?

**DR. TOMARKEN:**

I think the status is they're looking at trying to pay off the debt with -- with and the upgrades, the State requirements, that seems to be focus of it right now.

**LEG. KENNEDY:**

Again, I'm going to kind of suggest to you that on behalf of Legislator Browning and myself and for that matter actually Legislator Lindsay too, I would like for us to have some part of a conversation. You know, making a business decision to pay down debt, as I said, when we do have a reimbursement factor that is part of our daily Medicaid reimbursement rate is something, again, that should be a broad based decision with us. And quite frankly, if we're going to elect to park 15 to 16 million to liquidate debt; I personally want to see that with a long term commitment to attain the asset. I don't not want to see debt paid down so it's easier to flip the building. And I just -- I'd like to at least hear part of where that's going.

**DR. TOMARKEN:**

Okay. Any additional new business?

**MS. KENNEDY:**

I think I'm going to address -- okay. I think I want to address the elephant in the living room. Okay. I have heard that there have been two sets of people coming in to evaluate the nursing home. Is there a way that we can find out who they were and what their intent was?

**DR. TOMARKEN:**

Those people, and I was part of the tour so to speak, you can get that information from the administration. I don't have that information.

**MS. REEVES:**

Dr. Tomarken, I had sent -- talked to you last week asking you for that information. I had asked you last week for that information and I still haven't heard back from you.

**DR. TOMARKEN:**

No, I had forwarded your e-mail and copied you on it to the administration requested -- reiterating your request. So you should have an e-mail on the same day that you sent me -- we talked acknowledging your request to them.

**MS. REEVES:**

Do you have any idea when I can expect an answer?

**DR. TOMARKEN:**

I don't.

**MS. REEVES:**

And another thing I want to address what Terry had said about the -- why the beds aren't being filled, to my knowledge and I'm sure Mr. Carey will correct me if I'm wrong, we don't have anybody going out to try and fill the beds. Yet we have -- do have people in admissions but there's nobody going out to try and fill the beds.

**MR. CAREY:**

That's correct. I don't at this moment have a marketer.

**MS. REEVES:**

It means nobody's going out to try and fill the beds. There's no way -- it's not like the people are going to fall out of the sky. We need somebody to go out and market the facility in the hospitals to the doctors to get people in.

**MR. PEARSALL:**

That was part of the request that Mr. Carey made in January and February. And, I repeat, it's been ignored.

**MS. BRANDEAU:**

There's also the matter of the Adopted Budget, which directed the reduction of patients and staff. And -- but I think that was part of what was going into the discussion on everything in terms of staffing is that if the Legislature directed a reduction in patients then that had to be reflected at some point because budgetarily it wasn't provided for.

**MS. REEVES:**

That may be true, but by the same token if we don't have those beds filled we can't get bed hold and we're losing money just on that alone.

**MS. BRANDEAU:**

I'm not -- I'm sorry, I'm not trying to argue, I'm not looking to argue the point I'm just saying I think that part of, you know --

**MS. REEVES:**

I'm not arguing. I'm just --

**MS. BRANDEAU:**

-- that needs to be stated as well that there was -- the Legislature voted a reduction the number of patients this year.

**MS. REEVES:**

No, I'm not arguing I'm just stating a fact, I mean, we're never going to get bed hold, we're never going to be in anything but a deficit.

**LEG. KENNEDY:**

Kim, I'm curious as to who the entity was that was -- that toured through the facility as well. So if you could pass that request onto Fred. Obviously either himself or Regina or John Schneider; somebody knows who this entity was that was in there.

**MS. BRANDEAU:**

I will let them know you've inquired.

**LEG. KENNEDY:**

Thank you.

**MS. KENNEDY:**

It was two entities. Correct?

**MS. REEVES:**

Two separate occasions.

**DR. TOMARKEN:**

Yes. Any further business? All right, we need to set the schedule for the next meeting. Is August 24th, which is a Friday, Terry suggested that Friday's doesn't conflict with committee meetings and things like that.

**LEG. KENNEDY:**

Okay.

**DR. TOMARKEN:**

Friday the 24th at 10:00 a.m. here. Okay. I need a motion for adjournment.

**LEG. KENNEDY:**

Motion to adjourn.

**MS. BRANDEAU:**

Second.

**DR. TOMARKEN:**

Legislator Kennedy, seconded by Kim Brandeau. All in favor? Opposed? Abstentions? Thank you. The meeting is adjourned.

*(\*The meeting was adjourned at 10:29 AM\*)*

**{ } DENOTES SPELLED PHONETICALLY**