

# Committee Meeting

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## SENATE HEALTH AND HUMAN SERVICES COMMITTEE

"To interview Bruce Siegel, Commissioner  
Designate of the Department of Health"

**LOCATION:** Committee Room 7  
Legislative Office Building  
Trenton, New Jersey

**DATE:** February 9, 1993  
10:30 a.m.

### MEMBERS OF COMMITTEE PRESENT:

Senator C. Louis Bassano, Chairman  
Senator John J. Matheussen, Vice-Chairman  
Senator John H. Dorsey  
Senator Jack G. Sinagra  
Senator Richard J. Codey  
Senator Ronald L. Rice

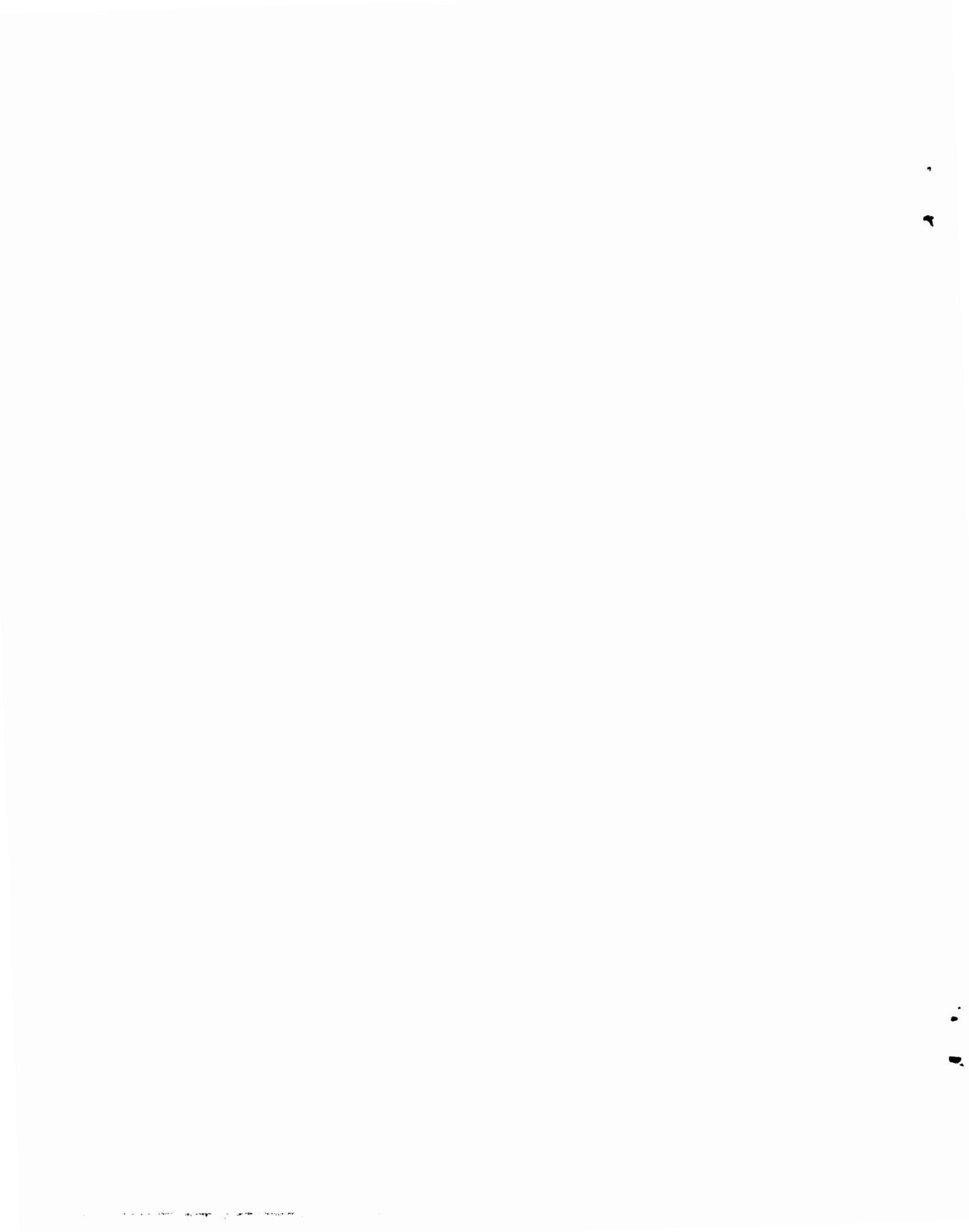


### ALSO PRESENT:

Eleanor H. Seel  
Office of Legislative Services  
Aide, Senate Health and Human  
Services Committee

New Jersey State Library

**Hearing Recorded and Transcribed by**  
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C. LOUIS BASSANO  
*Chairman*  
JOHN J. MATHEUSSEN  
*Vice-Chairman*  
JOHN H. DORSEY  
JACK G. SINAGRA  
RICHARD J. CODEY  
RONALD L. RICE

## New Jersey State Legislature

SENATE HEALTH AND  
HUMAN SERVICES COMMITTEE  
LEGISLATIVE OFFICE BUILDING, CN-068  
TRENTON, NEW JERSEY 08625-0068  
(609) 292-1646

### COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE HEALTH AND HUMAN  
SERVICES COMMITTEE

FROM: SENATOR C. LOUIS BASSANO, CHAIRMAN

SUBJECT: COMMITTEE MEETING - February 9, 1993

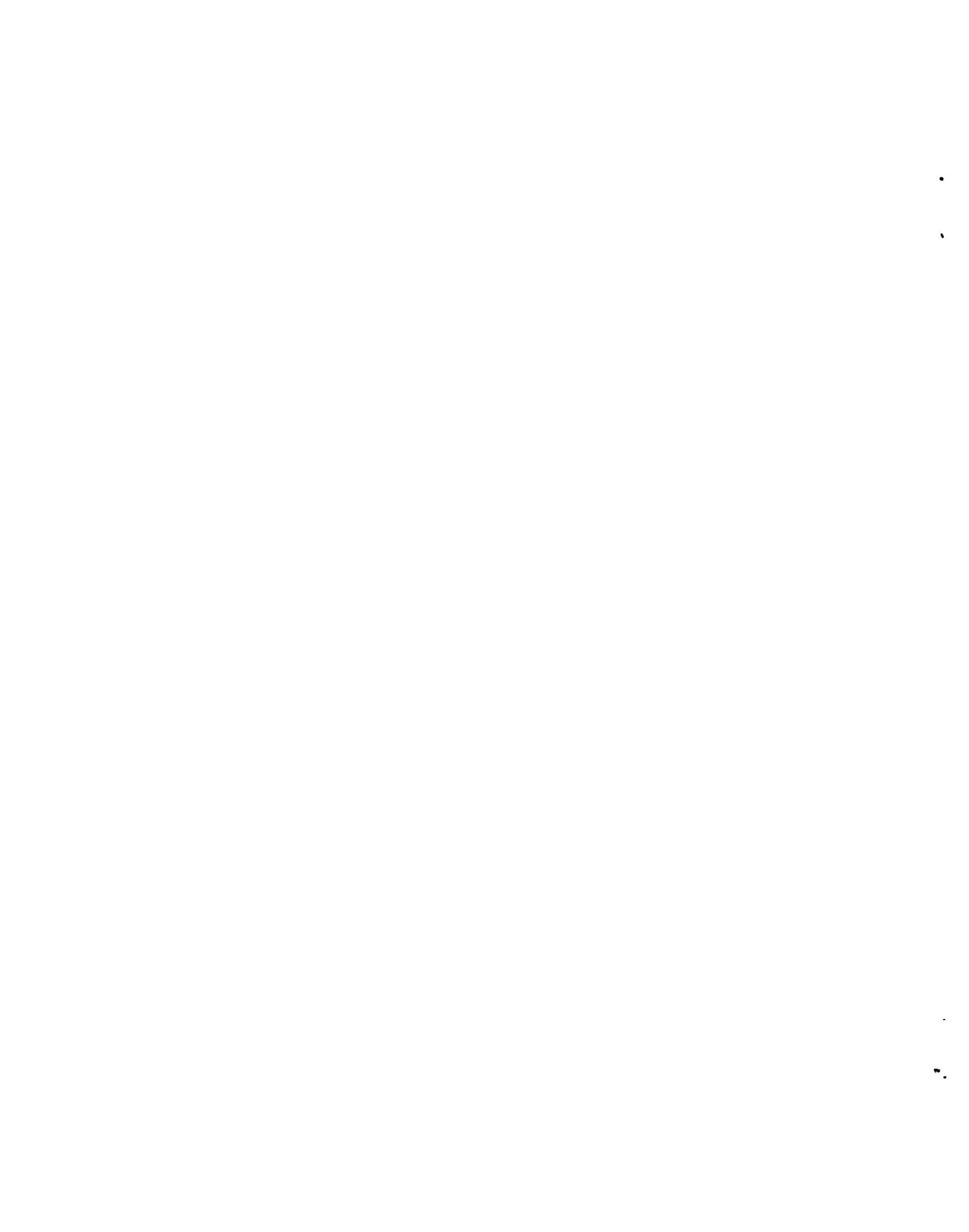
*The public may address comments and questions to Eleanor Seel,  
Committee Aide, or make bill status and scheduling inquiries to Pamela  
Chisolm, secretary, at (609) 292-1646.*

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The Senate Health and Human Services Committee will meet on Tuesday,  
February 9, 1993 at 10:00 AM in Committee Room 7, Legislative Office  
Building, Trenton, New Jersey.

The committee will interview Bruce Siegel, Commissioner Designate of  
the Department of Health.

Issued 02/02/93



# TABLE OF CONTENTS

Page

Bruce Siegel, M.D., M.P.H.  
Commissioner Designate  
New Jersey Department  
of Health

9

mjz: 1-47

\* \* \* \* \*



**SENATOR C. LOUIS BASSANO (Chairman):** Eleanor, let's start, because the hour is getting late. There are two members missing, who will be here. So, rather than us holding the meeting up, we will get a roll call and will start the proceedings. Eleanor, if you would?

MS. SEEL (Committee Aide): Senator Bassano?

SENATOR BASSANO: Here.

MS. SEEL: Senator Matheussen? (no response) Senator Dorsey?

SENATOR DORSEY: Yes.

MS. SEEL: Senator Sinagra? (no response) Senator Codey?

SENATOR CODEY: Here.

MS. SEEL: Senator Rice?

SENATOR RICE: Here.

MS. SEEL: There is a quorum present.

SENATOR BASSANO: Thank you. The purpose of today's meeting is to hear from Dr. Siegel, who has been nominated by the Governor for the position of Commissioner of Health. Dr. Siegel, if you would take a seat, and give us any statement you have.

SENATOR CODEY: Mr. Chairman, before he makes his statement--

SENATOR BASSANO: Oh, do you want to start, Senator Codey? Go ahead.

SENATOR CODEY: Sure. Correct me if I am wrong, but the purpose of today's meeting is, based on your statement, to go over some articles that appeared in the newspaper with regard to actions by some--

SENATOR BASSANO: I think there are some questions that the public would like answered. The procedure that the Senate President has set down is that on all confirmations, for each department, the respective committees will first interview the nominee, and then it will go to the Judiciary

Committee. So what we are seeing today is not something that is unusual, but something that, in fact, will continue to take place, including with the new appointment that I saw in the paper for the Commissioner of Human Services.

SENATOR CODEY: Yes, but Dr. Siegel is here today to respond to any questions any members of the Committee may have in regards to some newspaper articles.

SENATOR BASSANO: We are going to ask him some questions with regard to those articles.

SENATOR CODEY: Okay.

SENATOR BASSANO: There even may be some legislation coming down to close whatever loopholes may be there.

SENATOR CODEY: Okay. Mr. Chairman, I would just like to say that I read the series of articles twice now, and in some cases three times. In going over them, with all due respect to the newspaper which printed these articles, I could not find any "smoking guns." I found it hard to find an unloaded pistol with regard to the articles.

But, we are here today to talk about these two people, who many would say have been smeared by those articles. As we all know sitting around the room here, the most important thing to us is our integrity and our reputations. I feel somewhat saddened that this Committee would take up this particular procedure today, because in a way it damages, again, the reputation. I don't think for one instance, Mr. Chairman, that they have done anything wrong. I don't think there is any proof that they, in fact, have done anything wrong, and you and I and all of us value our reputations.

I think that in having this hearing, in response to those articles unfair to them-- As I said before, they have done nothing wrong. My dealings with both of them have been of the utmost integrity. Sometimes I disagree, certainly philosophically, with Brenda Bacon. We have had our disagreements, especially over the past year in dealing with

health care reform, but at no point have I ever thought they have done anything, or tried to personally gain for themselves out of their positions in government. I hope they will be able, one time, when they choose to, to leave government with their reputations intact, because I think they deserve that. I think the next time we do this, hopefully, there will be a much broader foundation and reason to do this, as opposed to today, sir.

SENATOR BASSANO: This Committee hearing is not to cast guilt upon any one individual. The Committee hearing is to hear from the new appointee and to get an idea as to what direction he is going to take the Department of Health, and while he is here, to also answer some of the past practices that took place in the Department. There are questions that were raised because of the newspaper articles that you mentioned earlier, and now certainly is an ideal time to ask someone who was in the Department why certain rules were changed and why things were done the way they were and if, in fact, perhaps legislation may be necessary to safeguard the public to make them feel that people are not profiting from their experience in government.

SENATOR DORSEY: Mr. Chairman, if I may-- I understand Senator Codey's statement, somewhat more subdued than it was rendered a week ago. Any questions that I ask are not asking the question of a criminal investigation, because I don't believe that that is my function here. It is, however, an extraordinary opportunity that Dr. Siegel -- Commissioner Siegel -- comes before us when these questions have been raised. Certainly Senator Codey wants to mention the good integrity of the people particularly mentioned. Certainly any citizen has the right to raise these questions, because certainly we have a peculiar situation here.

We have two people who are recognized as intimate in this administration's administration. They both hold positions

of enormous power. As I understand the articles, because their interests are held in "blind trust," they are not permitted to respond directly to the articles, or to the accusations, because that would mean that they, indeed, knew what had occurred during the time that their interests were held in blind trust.

So, it is an extraordinary situation, I think, even if these interests are in blind trust, and raises the question as to how blind a blind trust is, when we have two officials of, I certainly would say, great intelligence and perhaps business acumen, dealing in certificates of need, etc. in an administration in which they hold very powerful positions. I think the questions that will be asked will not delve into their integrity, but will delve into the manner in which the process of certificates of need has been dealt with, both legislatively and perhaps by this Department. I think that is a proper and appropriate inquiry to be made by this Committee. I don't know what other committee would make those inquiries.

SENATOR BASSANO: I tend to agree with Senator Codey. I am particularly concerned that we have taken the certificate of need process and have made--

UNIDENTIFIED MEMBER OF COMMITTEE: He agrees with Codey?

SENATOR BASSANO: Rather with Senator Dorsey, I'm sorry.

SENATOR CODEY: No, you were right the first time.

SENATOR BASSANO: No, Senator Dorsey. I am concerned that we have taken the certificate of need process, have taken that certificate and extended the life from one to five years. I am concerned that we have made that certificate into a commodity that can now be sold to someone else, placing a value upon it, and that we are allowing people to have more than one certificate. That was not the intent of the certificate of need law when it came into existence. It should not be a

commodity, and we should not have people dealing back and forth with the sale of these items. If you are going to go for a certificate of need, obviously you should be building the facility. You should go for one at a time. It should be good for a year. You should have a legitimate interest in constructing a facility, and not hold up the process for three, four, or five years, and keep coming back and asking for extensions.

Maybe that is something we will address at a later date. Why don't we get into today's testimony from the Acting Commissioner?

SENATOR RICE: Well, before you do that, Mr. Chairman, I would like to make a statement.

SENATOR BASSANO: Yes, Ron, please do.

SENATOR RICE: I think the people around this table have done a lot of things, practice law, and other types of businesses, but I think I am the only one who actually locked up people and investigated them thoroughly, etc. I know the kinds of questions that should be asked or inquired into, one form versus another form.

It is my understanding that Dr. Siegel has come before us and the Judiciary to be considered for an appointment as -- for confirmation in the position of Commissioner of Health. I would hope, because I agree with what both sides said, you see-- I don't know about the other folks, but I do know that government isn't pure. Those of us who have been elected, and those of us who work in government, don't like to say those things, but you all know it too, regardless of who the individuals or groups of people are.

My concern at this hearing is, what happens to the unites; what happens to health care in general -- quality health care for our people, with some of the things that we have done legislatively that I think can be harmful. My concern wouldn't be having the Doctor try to respond to

something that other folks were in charge of doing. If you want to ask questions of the process relating to CNs, then we should ask what he intends to do or what he has done since he has been Acting, because I don't think he was a part of Dr. Dunston. If you want to ask questions on what was done when Dr. Dunston was there, then she is the most appropriate person to bring back, and she is not far. If you want to ask questions of Brenda Bacon -- and I would like to -- and Joe Salema and other people whose names have come up, then we should bring them in.

I am just not going to allow -- and I just want to say this before we get started-- I have been pretty good on most of my committees, but I am good at running interference and throwing blocks when I think we are operating to the detriment of people. I don't mind knocking folks out, but I like to knock out the right folks. To me, depending on how the questions get answered from both sides, I am going to run interference. I don't think it is a question -- even though you all may think so -- that he should be answering, because it should be Dr. Dunston or Brenda Bacon or somebody. I want to make that very clear.

I don't like to play those games. I am on board with the Committee for looking at this whole scenario. I don't think any particular committee should have that function. I just want to make sure that we have the right folks before us when we start asking certain types of questions, because I would not respond in any forum to something I really couldn't answer. I wouldn't be guessing; you know, I would want confirmation, but I just wouldn't be guessing what Dr. Dunston did, or what other folks did.

If you want to talk about his previous position in the Department, how he intended to change the Department with what he knew, or how he intended to change the Department with what he had heard, CN is one thing in terms of checks and balances.

I just want to be clear on the record where I am coming from, because it may be the first meeting since I have been on this Committee where I really get out of place. I hope that does not happen.

SENATOR DORSEY: Senator Rice, just one point so that we can understand each other: Ground rules go forward.

SENATOR RICE: That's why I want to put them up front.

SENATOR DORSEY: I understand. I think I understand what you're saying. I certainly don't anticipate that you will be an obstructionist if we are trying to examine Dr. Siegel.

You know, I understand that Dr. Siegel is not responsible for what occurred during the time of, not only Dr. Dunston's time as the Commissioner, but any prior Commissioners. On the other hand, as the present Commissioner, he has access to the files as to certain certificates of need which were issued. Indeed, based upon the statement that he has handed out this morning, it would appear that he has, indeed, reviewed those files. So, obviously he is not personally responsible for what may have occurred when he was not Commissioner designee. That does not necessarily mean that he does not have knowledge, because he has authority and jurisdiction over files; that he has not reviewed some of those files for the purposes of his public statement, or the statement he has made today.

Therefore, I do not think it is unfair to ask him questions about those files, because they are now within his jurisdiction.

SENATOR RICE: I agree with you. You can ask questions about the files, but the questions should really be questions about whether or not -- if, in fact, he observed things that he would not allow to happen, or that he would do differently. That is a little bit different than saying -- than, you know, going through a third degree, as you would as an attorney in a criminal case -- okay? -- or as I would when I

interrogate someone in the precinct. I know the difference. That is the point I'm making. I know the difference -- okay? -- between what should be asked of people at a given time by any of us, etc.

What I am saying is, I don't want to be arguing and yelling and cursing, and you all tell me I'm crazy -- Senator Codey, yourself, or my colleagues. I am being honest about that. At least I come up-front down here with my feelings, and I get along with everybody. But I don't like what is going on, because when I try to get help for the kinds of questions that should have been asked of people in the past -- I don't blame the people here, but from government in general -- you know, from institutions, we can't get answers.

So I am not going to have that brother sit here -- and I say "brother" intentionally -- and be embarrassed -- or anyone else -- by something he can't answer. He is his own person, and I have not spoken to him. But I am tired of us being set up in front of cameras, looking like a bunch of yo-yos and old tap-dance folk. I think that when we do something wrong -- or there are some questions that are legitimate to be raised, we can raise them.

I am just hoping that this forum will bring all the right questions out, because I will never forget when I came to Trenton, I said, "I am not going to be the African-American legislator. That is my ethnic group. I represent people." And I will never forget that a Senator told me, "If you don't speak up for your folks, who will?" I got offended, and I said, "That is what we elected you all for."

So I am just letting you know right now that I am here to listen. I probably won't say much, and I probably won't ask much, but I will run interference on both sides of the aisle if I think we are asking questions that should go to Dr. Dunston, Brenda Bacon, etc.; that is, history of your files, history of

your processes, what you like and don't like. I think that is more fair. Okay?

SENATOR BASSANO: Senator Codey?

SENATOR CODEY: Mr. Chairman, I just want to say, part of your statement, I agree with. I think if you had taken the policy issues that The Trentonian brought up, legitimate issues of policy, and had a hearing on those, I would not have disagreed with you at all. Unfortunately, it has gone beyond that into the integrity issue of two people in the administration, and that is where we would depart. That is where I feel a little saddened.

SENATOR RICE: My final comment: Where we disagree-- I think when there is a question raised about the integrity of individuals, we should look at that. That is our fiduciary responsibility. The problem is, the question of Dr. Siegel's integrity was not raised. That is why I say I have no problem, and I concur, if our Committee or other committees want to take a look at that whole issue with the parties so named. I am all for that.

I think that regardless of whether we like it or not, that is our responsibility. So that is where we disagree. That integrity allegation should be looked at, because they always look at mine, when it is raised.

I'm sorry, Mr. Chairman.

SENATOR BASSANO: Dr. Siegel.

**COMM. DESIGNATE BRUCE SIEGEL:** Thank you.

You know, it is that time of year for colds and the flu and the like. I have contracted one, so I hope my voice will hold out throughout today. I apologize if you cannot hear me very clearly.

I am very pleased to be here, and to be nominated by the Governor to be the Commissioner of Health. I look forward

to helping him carry out a program of health care reform for New Jersey.

I was here last week, and I was disappointed not to have had an opportunity to answer your questions then. I am ready today, and look forward to speaking with you about many of the exciting things going on at the Department of Health.

But I would like to begin, Senator, by addressing myself to the questions you raised last week in regard to the recent series of articles in The Trentonian alleging undue influence in the certificate of need approval process for New Jersey long-term care facilities. In so doing, I hope to address the concerns of the Committee in regard to these baseless allegations.

This series of articles, purely and simply, is built upon misinformation, innuendo, and outright falsehood.

The CN approval process has evolved over time and has been administered according to the standards set forth in laws enacted by this Legislature and by regulations adopted after public debate. These standards are a matter of public record. This process is a completely open and public one which carefully takes into account the health care needs of all New Jerseyans. To allege otherwise would be to impugn the professional integrity not only of the staff of the Department of Health, but of the dozens of New Jersey citizens who serve as volunteers on our planning and regulatory bodies.

CN applications for new long-term care services are accepted only after a need has been demonstrated through the county-by-county application of an objective statewide bed-need methodology. Applications are reviewed at six distinct staff levels of the Department of Health: for 45 days by the LABs, which are required to solicit input from the public; and then for another 45 days by the State Health Planning Board, whose recommendation is announced at an open public meeting. The

recommendations of these two bodies are then submitted to the Commissioner of Health, who makes the final decision on the CN application.

The Committee asked for a list of CNs that have been verbally approved. There are none. There is no such list. There are no exceptions to this requirement. These final decisions are made in writing and must contain the reasons for any action. They are subject to review by the courts. CN applications are subject to the review of the public, competing applicants for CNs, and the press.

You also asked about how long a CN is valid. Under the old statute, CNs were valid for one year after approval. The Health Care Cost Reduction Act of 1991 presented the Department of Health with the opportunity to examine whether a one-year CN was appropriate and in the public interest. Experience -- long experience -- has taught us that due to factors such as financing, zoning, and local approvals, it took considerably longer -- five years on average -- to move a long-term facility from CN approval to licensure and operation. As a result of this review, and public comment, the Department established a five-year standard to bring economies to the health care field. The idea that the earlier standard was superceded so that someone could benefit is completely baseless.

I want to address the impact of the moratorium on certificate of need. The purpose of this moratorium was to hold back on approving CNs until the State Health Plan was completed. The Plan is a blueprint for enlightened change, an assessment of the supply of, and demand for, health care resources in the State. The Department felt, and determined, that it was unwise to approve major new capital construction projects until it could make a decision consistent with the Plan's recommendations.

At the same time, it was determined that some types of CN applications would not be affected to any degree by the State Health Plan. Therefore, subject to public comment and review, regulations creating exceptions to the moratorium were established. The Trentonian said that just eight exceptions for long-term care facilities were granted. In fact, there were 53 requests for exceptions filed for all types of health care facilities; 23 of them were for long-term care facilities. Sixteen of these -- not eight -- were granted. Indeed, public information in the CN files was made available to The Trentonian which would have confirmed the integrity of departmental procedures.

A further word about the long-term care chapter of the State Health Plan: It, like the rest of the Plan, was developed by the staff of the Department's Office of Policy and Research, with the help of three advisory bodies and several trade associations. It was then reviewed and approved by both the State Health Planning Board and the Health Care Administration Board. The chapter assesses New Jersey's long-term care needs into the next century, and recommends maximizing alternatives -- and I want to stress "alternatives" -- to nursing home care for those whose care needs can be better met elsewhere, especially in their own homes. I am pleased to say that this chapter has met with widespread public approval; indeed, it is viewed by many as a model for national reform. I should also add that it actually builds on the work done by many other states along similar lines.

We have reason to be proud of New Jersey's long-term care system. Our facilities are currently operating at 90 percent to 95 percent of capacity, a rate which both maximizes efficiency and minimizes waiting time. The rules that govern it have been developed with the input of hundreds of New Jerseyans. To suggest that a system consisting of almost 350 licensed facilities, involving over 800 private entities with a

managing interest, and subject to very public statutory, administrative, and judicial guidelines is being manipulated, is to strain credulity to the breaking point.

Members of the Committee, a certificate of need is not a commodity. It is not a stock or a bond. It cannot be bought or sold. This is a highly regulated area. CNs are issued only after careful, painstaking review according to the standards set forth in the law.

The CN process is subject to intense public scrutiny by newspapers, by competing CN applicants, by health care providers, and, ultimately, by the judiciary. The integrity of this process is intact and remains a model for America.

Thank you. I look forward to answering your questions.

SENATOR BASSANO: Commissioner, you just made a statement that the CNs cannot be bought or sold. My understanding was that a CN can be transferred, and that it is a commodity.

COMMISSIONER DESIGNATE SIEGEL: Okay, we'll talk about that. I think it is very important to draw some distinctions here, especially between an implemented and unimplemented certificate of need. A certificate of need which is unimplemented, meaning no building has been built, is just a CN, something on paper, permission to construct a facility, and it cannot be bought and sold between parties.

If I were to acquire a CN to build a needed facility somewhere in New Jersey, I could not then sell it to you to do the same thing. There are some limited regulations on transfer of ownership which do allow for minor ownership changes of an unimplemented certificate of need: such as a redistribution among partners; such as withdrawal of a partner -- an existing partner; and such as the bringing in of a new ownership interest, but only up to a 25 percent ownership interest, no more than that. The idea that it can be bought and sold from

one party to another is just not true, and that needs to be clarified.

Now a transfer of ownership from one party to another can take place, but with a built facility, and there are rules for going through that. That used to require a CN. It does not under the Health Care Reform Act of '92. That sort of thing would not require a CN. But we have always been very careful to make a distinction between an implemented and an unimplemented CN, because the last thing anybody would want to do, would be to create a secondary commodity market in bartering unbuilt certificates of need.

SENATOR DORSEY: May I just--

SENATOR BASSANO: Go ahead.

SENATOR DORSEY: So, if a corporation acquires an unimplemented CN, there can be a change in the ownership of the stock of the corporation that holds the certificate of need. Is that correct?

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: And that change in the ownership of the stock, does that require approval by the Department of Health before the exchange of the stock?

COMMISSIONER DESIGNATE SIEGEL: Yes, it does.

SENATOR DORSEY: So the stock can be exchanged--

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: --but essentially the corporation cannot sell the CN to some other third party.

COMMISSIONER DESIGNATE SIEGEL: Right, right.

SENATOR DORSEY: Now when we get to an implemented CN--

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: --what are the restrictions either in terms of the reallocation of stock in the corporation that holds it, or the sale of the CN per se? Let's say-- I don't know if you are familiar with the term, "bulk sale" -- bulk

sale -- a corporation sells all of its assets to another corporation.

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: What restrictions, etc., are placed on that?

COMMISSIONER DESIGNATE SIEGEL: A couple of things: Currently, under the Health Care Reform Act, that area is now not subject to certificate of need of a facility; a transfer of ownership regarding a built facility. However, it would be subject to licensure review. So, if I were transferring it from me to somebody else, or selling it from me to somebody else, a built facility, that new owner would be subject to a very serious track record review, which involves combing through a national data base and seeing if those new owners have had any negative experience in owning, managing, operating a nursing home. We are very strict about that.

SENATOR DORSEY: So essentially, you can transfer the CN once it is implemented, but you can only transfer it to another party who is duly licensed to hold a CN.

COMMISSIONER DESIGNATE SIEGEL: Who is duly clear on the track record, and who also has the financial capability to operate it responsibly.

SENATOR CODEY: Mr. Chairman?

SENATOR BASSANO: Yes, go ahead.

SENATOR CODEY: One of the issues raised here -- and I think, John, maybe you can understand this -- is the issue of the validity of the CN from one to five years, which we changed.

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR CODEY: The reason we did, John, is, as you know, with zoning and financing today, as the Doctor pointed out-- Once you get the fee in, to get the zoning and the financing in place within one year is almost impossible. So we changed it, as a result of the recommendations of the Governor's Commission on Health Care, to five years to be

practical, and for no other reason at all. Just due to the practical realities of zoning and financing in the '90s today, was the reason it was changed from one year to five years, and for no other reason.

SENATOR DORSEY: Well, I don't think we've gotten to that area of inquiry yet. Do you want to do something else before we--

SENATOR BASSANO: I wanted to talk about the moratorium. I wanted to know, during the period of the moratorium, were there any exceptions made to the granting of CNSs?

COMMISSIONER DESIGNATE SIEGEL: Yes. Let me talk a little bit about the moratorium. I addressed it somewhat in my opening remarks.

SENATOR DORSEY: Excuse me, Doctor, so you can structure this a little bit for us.

COMMISSIONER DESIGNATE SIEGEL: Yes?

SENATOR DORSEY: Will you first give us the dates that the moratorium was in effect, and what it was a moratorium on?

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: Ultimately what we want to know is, how many variations were applied for during the moratorium period and granted during the moratorium period?

COMMISSIONER DESIGNATE SIEGEL: Sure. The moratorium was put into place in August of 1991, about a month or so after the implementation and the enactment of the Health Care Cost Reduction Act, and it stayed in place through the end of 1992. It was put into place through the regulatory process, and exceptions to the moratorium -- which I am going to talk to -- were also-- A system of exceptions to the moratorium was also put into place through the regulatory process.

SENATOR DORSEY: Okay, but first tell us-- I assume there was a regulation issued by the Department to establish the moratorium.

COMMISSIONER DESIGNATE SIEGEL: Yes.

SENATOR DORSEY: Precisely what was it a moratorium on?

COMMISSIONER DESIGNATE SIEGEL: The moratorium was on certificate of need activity, and it applied not only to nursing home areas, but it applied, really, across-the-board. The idea was that if we were going to go out and do a State Health Plan -- which we were then mandated to do -- we shouldn't be making major decisions on major new capital projects, without having any plan in place or any criteria in place, as we were supposed to do. So this went to the regulatory process through the Health Care Administration Board -- you know, through the whole administrative law process.

At the same time, it was realized -- and we received a lot of comment on this from people in the private sector -- that there were some certificate of need transactions that would not be impacted by the State Health Plan; that did not address major public policy changes, that probably should be allowed to go on. So an exception process was put in involving transfers of ownership; involving mandatory renovations, if somebody had a legal problem, was not up to code, needed to renovate; involving changes in cost or scope of an existing CN, but less than 10 percent of the value. Those sorts of things were also put in through the regulatory process as exceptions.

During the course of the moratorium -- and I should state that this is, I think, either the third or fourth moratorium since 1971 in the New Jersey certificate of need process-- Moratoriums, I think, are fairly common, not only in New Jersey, but in other states. We received, as has been noted before, about 53 requests for exceptions to the moratorium.

SENATOR DORSEY: Okay. Let me stop you there. These 53 requests were submitted after August of '91, when the moratorium went into effect?

COMMISSIONER DESIGNATE SIEGEL: During the course of the moratorium, right. Twenty-three of those were in the long-term care area; 30 of those were not in the long-term care area, but in other facility areas. Of the 23, there were 16 in long-term--

SENATOR DORSEY: I take it that when we say "long-term," we are now talking about nursing homes?

COMMISSIONER DESIGNATE SIEGEL: Mostly nursing homes, right.

SENATOR DORSEY: Are we talking about hospitals, or just nursing homes?

COMMISSIONER DESIGNATE SIEGEL: No, I am talking about nursing homes. It may also include some other things, like some long-term residential health care facilities. I am not exactly sure, to be honest with you. And there were 30 that were not in the long-term care area. Of those 30, 22 were approved.

SENATOR DORSEY: So there were 23 long-term? And how many of those-- How many of the 23 were then granted during the course of the moratorium?

COMMISSIONER DESIGNATE SIEGEL: Sixteen.

SENATOR DORSEY: How many of those that were granted, built either at Meadowview and/or Whiting?

COMMISSIONER DESIGNATE SIEGEL: I believe there were maybe two or three at Meadowview, and one at Whiting.

SENATOR DORSEY: Two or three at Meadowview.

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: And, Doctor, at Whiting?

COMMISSIONER DESIGNATE SIEGEL: At Whiting, I think there was-- If I remember correctly, I think there was one during the moratorium.

SENATOR DORSEY: Okay. Can you just tell us what the nature was of those grants?

COMMISSIONER DESIGNATE SIEGEL: Meadowview: Actually there was one which was filed in July of '91, which was to reduce residential health care beds. That was allowed under the moratorium, and it did not incur additional capital costs.

SENATOR DORSEY: Excuse me. Did you say, "to allow," or "to eliminate"?

COMMISSIONER DESIGNATE SIEGEL: To allow for the elimination of 40 residential health care beds.

SENATOR DORSEY: To allow the elimination?

COMMISSIONER DESIGNATE SIEGEL: Yes. Okay?

SENATOR DORSEY: Okay. Just one?

COMMISSIONER DESIGNATE SIEGEL: Just one. The other issue regarding Meadowview, regarded a situation where one of the partners involved in the ownership died. That application had actually been filed back in December of '89. I think it is important in reviewing the newspaper's discussion of what went on at Meadowview, to realize that a certificate of need was duly processed, and there was really no major issue around it because it did not involve a new partner coming in. It did not involve redistribution; there was no new face; there was no need for a new track record review. It only regarded the death of an existing partner.

SENATOR DORSEY: It's two.

COMMISSIONER DESIGNATE SIEGEL: Yes, those are the two that I know of regarding Meadowview.

Regarding the issue of Whiting, this is also a situation where one entity actually pulled out of the partnership. No new face is going into it; no major change in ownership. That was duly reviewed by the Department and granted.

SENATOR DORSEY: Let's get back to Meadowview for a moment. What was the composition of the original certificate of need issued to Meadowview? I assume that it included a certain number of nursing beds and a certain number of health

care -- residential health care beds -- is that correct? -- at the time of its issuance.

COMMISSIONER DESIGNATE SIEGEL: Right. I believe that is true; I do not know that in detail.

SENATOR DORSEY: But they were all part of a single package of the CN that was issued, were they not?

COMMISSIONER DESIGNATE SIEGEL: That may be. I do not know.

SENATOR DORSEY: Well, at the time of the elimination of the 40 residential health care beds--

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: --what else was at Meadowview?

COMMISSIONER DESIGNATE SIEGEL: I believe there were nursing home beds, and I believe there was also a ventilator -- a special program ventilator unit -- also present at Meadowview.

SENATOR DORSEY: Now, on what basis were the health care -- I'm sorry -- the residential health care beds eliminated at Meadowview?

COMMISSIONER DESIGNATE SIEGEL: My understanding is that they no longer felt a need to operate them. I know that in New Jersey, in the broad policy arena, we have had a problem with unused residential health care beds. There has not been a shortage; in fact, there has been an excess. These were clearly something-- The reduction of residential beds, as long as it did not incur new capital costs, was something that was clearly allowed in the moratorium exceptions.

SENATOR DORSEY: Your statement is that they -- and I take it you are now referring to the holders of the certificates of need--

COMMISSIONER DESIGNATE SIEGEL: Right, the applicants. Right.

SENATOR DORSEY: ...and it unprofitable, or unnecessary to operate those beds. But am I not correct to assume that when the Department of Health issued a certificate

of need to Meadowview, which included these residential health care beds, the Department had, in fact, determined that there was a need in that community for that type of facility?

COMMISSIONER DESIGNATE SIEGEL: Right, that is true.

SENATOR DORSEY: And essentially, for the Department then to have allowed the elimination of those beds-- The Department found that they were no longer a need in the community. Is that correct?

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: Is it not--

COMMISSIONER DESIGNATE SIEGEL: Or that that need may be being met by another facility. There are a variety of constructs under which this could operate.

SENATOR DORSEY: Isn't it generally understood in the business that the nursing home beds are the profit-making aspect of the operation, whereas the residential health care beds are, to a certain extent, loss leaders in the process of applying for a certificate of need?

COMMISSIONER DESIGNATE SIEGEL: I don't know that.

SENATOR DORSEY: You don't know that?

COMMISSIONER DESIGNATE SIEGEL: I don't know that.

SENATOR DORSEY: So during this moratorium, Meadowview was permitted to eliminate 40 residential health care beds. Now, in eliminating those beds, were they permitted to transfer those beds into nursing home care beds -- nursing beds?

COMMISSIONER DESIGNATE SIEGEL: Not as far as I know.

SENATOR DORSEY: How many other holders of certificates of need for long-term care facilities during the period of August of '91 to September of '92 received the same type of waiver, namely the allowance to eliminate residential health care beds?

COMMISSIONER DESIGNATE SIEGEL: I do not know the answer to that, but we can get that to you.

SENATOR DORSEY: Okay. Did you tell us what the exception was that was granted at Whiting?

COMMISSIONER DESIGNATE SIEGEL: At Whiting, the issue was over the withdrawal of a principal owner of Whiting, and so it was a transfer of ownership issue.

SENATOR DORSEY: Okay.

SENATOR CODEY: Mr. Chairman?

SENATOR BASSANO: Go ahead, Dick.

SENATOR CODEY: I would like to follow up on some of Senator Dorsey's questions. Doctor, is it unusual for one facility to seek more than one exemption?

COMMISSIONER DESIGNATE SIEGEL: Absolutely not.

SENATOR CODEY: It's common?

COMMISSIONER DESIGNATE SIEGEL: It's common.

SENATOR CODEY: Not unusual at all?

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR CODEY: The reason for eliminating those beds-- Wouldn't it be purely economics, for the most part, sir?

COMMISSIONER DESIGNATE SIEGEL: It may have been economic. I don't know.

SENATOR CODEY: Okay. Is it true that there is more of a demand today for "ventilator" beds than long-term residential?

COMMISSIONER DESIGNATE SIEGEL: That issue has been brought up to me, that there may be more of a demand for ventilator beds; that there are not enough in the State.

SENATOR CODEY: It has been alleged that the waiting list for the ventilator beds is much longer than for the residential beds.

COMMISSIONER DESIGNATE SIEGEL: Right, right.

SENATOR CODEY: That would obviously play into the scenario as to why you would want to eliminate some--

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR CODEY: --and hopefully gather some more ventilator beds.

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR CODEY: Pure economics, and it makes good business sense. Also, and more importantly, beds for the residents of the State of New Jersey, if there is a short supply of those ventilator beds.

COMMISSIONER DESIGNATE SIEGEL: Clearly our stand is that these facilities, these nursing homes, all of them should be financially viable. It is not our intention to have them operate in a regulatory environment where they can't keep their doors open. We don't think that would be in anybody's interest.

SENATOR CODEY: Okay. But also, in many instances you would want -- in some cases, and correct me if I am wrong, Doctor -- to eliminate some of those residential beds and transfer them into ventilator beds.

COMMISSIONER DESIGNATE SIEGEL: Yes, other uses. Right, right.

SENATOR CODEY: And of course, obviously, they cannot do that unless you approve it.

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: Excuse me; excuse me. You don't ask questions. You ask questions and make a statement at the same time.

SENATOR CODEY: That is your opinion, sir.

SENATOR DORSEY: No, you do, because I am trying to follow you. Is Dr. Siegel now saying that the 40 residential-- Is it health care or residential care?

SENATOR BASSANO: Residential care.

SENATOR DORSEY: --that residential care beds were not simply eliminated, but they were transferred into a different type of bed?

COMMISSIONER DESIGNATE SIEGEL: No, I am not saying that. No, no.

SENATOR CODEY: What I am saying is, today there is less of a demand, John, for these residential beds, and there is a great demand for the ventilator beds.

SENATOR DORSEY: I understand that. Okay, fine.

Just let me go back to this situation again. The change of ownership because of the withdrawal of a partner; the change of ownership because of the death of a partner-- I mean, I take it that that is pretty mundane stuff. But it does seem to me that the allowance to eliminate residential care beds invokes a certain amount of policy-making, or policy determinations, does it not?

COMMISSIONER DESIGNATE SIEGEL: Absolutely.

SENATOR DORSEY: I thought it was your testimony, Doctor -- and I don't even know whether you had any personal role to play in the elimination of the residential care beds at Meadowview, as you did at Whiting-- But, wasn't the moratorium, by your own testimony, put into place so that there would not -- so that there would be a period in which policy decisions of this nature would not be made until there was an overall policy decision made as to these issues?

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR DORSEY: And is it not true, since I had a limited role in composing the Health Care Reduction Plan of 1990 -- whenever it was--

UNIDENTIFIED MEMBER OF COMMITTEE: If it was limited.

SENATOR BASSANO: He would have to vote no.

SENATOR DORSEY: It recommended -- and this has nothing to do with you personally, as I understand it, and I want you to take note of it-- Am I doing all right so far, Senator?

SENATOR RICE: So far you're doing great.

SENATOR DORSEY: Is it not true that in that document it essentially recommended such things as residential care beds

as an alternative to the more expensive type of bed, namely the nursing care bed?

COMMISSIONER DESIGNATE SIEGEL: Okay, two things: I think-- First of all, due to the moratorium, I think in New Jersey for several years there has been a realization on the face of it that there was an excess of residential health care beds. Now, I guess you are addressing the long-term care chapter of the Plan when you talk about residential care as an alternative. We would like to foster that in the future. However, if you look through the long-term care chapter, the main thrust of it is actually not for residential health care beds, but is towards assisted living and a number of other options, and community-based care.

SENATOR DORSEY: Okay.

COMMISSIONER DESIGNATE SIEGEL: I think that would be a more fair interpretation of it -- of the chapter's thrust.

SENATOR DORSEY: Okay, I'll accept that, but there is no question that during this moratorium, in terms of Meadowview, we had something other than simply a mundane exception granted. We had something that involved a policy decision. Okay.

You said that you would get for us -- and we would appreciate this; I don't mean today -- a list of all of the exceptions that were applied for and granted during the period of the moratorium. We would also like to know whether or not during that moratorium any other nursing home, such as Meadowview, received the allowance to eliminate residential care beds.

COMMISSIONER DESIGNATE SIEGEL: Residential beds.

SENATOR BASSANO: Doctor, can you tell me the average length of time between when a licensee files for an ownership change in the Department -- how long that would normally take?

COMMISSIONER DESIGNATE SIEGEL: About 90 days.

SENATOR BASSANO: Can you tell me why Meadowview was allowed to linger for 18 months?

COMMISSIONER DESIGNATE SIEGEL: In terms of the certificate -- and we need to clarify this in the article-- The article, I think, was somewhat misleading in this regard. A certificate of need approving a change in ownership at Meadowview, which was the death of a partner, did not linger for 18 months. A certificate of need was granted in a due time frame. There was an 18-month delay in getting the licensure file updated to reflect the pulling out -- or, I should say, the death of that one partner. It was a bad delay. Absolutely. It is not something that we want to encourage; it is something that I will direct the staff to not have happen again.

But I have to be very clear: That was not a delay of a certificate of need. That was a delay in updating the licensure file which took 18 months. There is a difference there.

SENATOR BASSANO: Senator, did you have--

SENATOR SINAGRA: May I go on to a different--

SENATOR BASSANO: Yes, go ahead.

SENATOR CODEY: I just wanted to stay on that point.

SENATOR BASSANO: Before you go on to something else, please let Senator Codey finish.

SENATOR SINAGRA: No, absolutely not.

SENATOR CODEY: Doctor, the elimination of those beds at that particular nursing home, did that go against the thrust of the State Health Plan?

COMMISSIONER DESIGNATE SIEGEL: No, I don't think so, because the proposal for the State Health Plan was not written at that time, and that is actually right. Second of all, I think there is a question of the number of residential beds in this State -- the numbers of them.

SENATOR CODEY: So in the determination, as it now flows through in terms of what the State Health Plan recommends, that is totally consistent?

COMMISSIONER DESIGNATE SIEGEL: It is not a violation of it; no, it is not.

SENATOR CODEY: The elimination of those beds.

SENATOR BASSANO: Has anyone from the Governor's Office ever picked up the telephone and verbally requested that a certificate of need be approved?

COMMISSIONER DESIGNATE SIEGEL: No.

SENATOR BASSANO: Will you state before this Committee that you will not allow that to happen?

COMMISSIONER DESIGNATE SIEGEL: Absolutely not. I would like to talk about that a little bit, if you would indulge me.

SENATOR BASSANO: Sure, please do.

COMMISSIONER DESIGNATE SIEGEL: We are consistently bombarded by inquiries about certificates of need. I find that about 2 percent of my staff works on it, but it can take up all of your day, if you want it to. Clearly it is very hot. People are interested. There is high visibility. Everybody asks questions about it, and the like. We get inquiries all the time.

Have I ever gotten a direction, or a recommendation, or anything of that sort from the Governor's Office as to what to do about a CN, either in writing or by telephone? Absolutely not.

SENATOR DORSEY: Let me follow this up: As I understand it, the principal parties involved are Ms. Bacon-- What is her title in the Governor's administration?

COMMISSIONER DESIGNATE SIEGEL: Chief of Management and Planning.

SENATOR DORSEY: Chief of Management and Planning?

COMMISSIONER DESIGNATE SIEGEL: Yes.

SENATOR DORSEY: Then there is Mr. Salema, who is Chief of Staff, right?

COMMISSIONER DESIGNATE SIEGEL: Yes.

SENATOR DORSEY: As I understand it -- and I ask you whether this is your understanding -- when they assumed the present positions which they hold, they placed their holdings in their respective corporations that hold these CNS into a blind trust. Is that correct?

COMMISSIONER DESIGNATE SIEGEL: Yes.

SENATOR DORSEY: Now, do you know whether or not their interests in the corporations, or partnerships that hold these CNS, have ever been disposed of by them?

COMMISSIONER DESIGNATE SIEGEL: No, I do not know that.

SENATOR DORSEY: So, to your knowledge, when an application comes from Thomas J. Kelly, who apparently is now the trustee for Health Team, Inc., you recognize that as coming from someone who controls the trust into which Ms. Bacon and Mr. Salema have deposited their respective interests in these nursing homes?

COMMISSIONER DESIGNATE SIEGEL: No, I don't. I don't recognize it as that, because I do not make it a policy to know who owns what in what nursing home. So, an application coming from Tom Kelly-- I do not know what his connection was. The newspaper has made a variety of representations as to who owns what, and the like. They may be true; they may not be true. This is not something where I make it a policy of verifying or finding out.

SENATOR DORSEY: I didn't ask you whether you make a policy of finding out or investigating that.

COMMISSIONER DESIGNATE SIEGEL: The answer to your question is, "No, I would not know if it is somebody who in any way represents anybody's trust in the Governor's Office."

SENATOR DORSEY: Well, did you ever know that Ms. Bacon and Mr. Salema had, indeed, transferred these interests into this blind trust?

COMMISSIONER DESIGNATE SIEGEL: I knew that there was a blind trust for both of them, yes.

SENATOR DORSEY: And did you know that within these blind trusts -- or to these blind trusts that they deposited their interests in these CNs?

COMMISSIONER DESIGNATE SIEGEL: I knew that they had nursing home interests that were put in blind trusts. That was the extent of my knowledge.

SENATOR DORSEY: Let me ask you this question, Commissioner: Do you believe that other members of your Department, employees who have been there for years, do not recognize the Whiting facility and the Meadowview facility, and perhaps the Mountainview Convalescent Center, the Craven Point, and the Clark Nursing Home as being CNs in which, at least at some point in time, Ms. Bacon and Mr. Salema had an interest?

COMMISSIONER DESIGNATE SIEGEL: Oh, they may very well know that. I think those things are disclosed on the application forms.

SENATOR DORSEY: Let me ask you this: Recognizing that they know that interest in those CNs is owned by those individuals, or is held in trust for those individuals, do you believe it has any effect at all upon them in having to pass judgment on issues dealing with those CNs?

COMMISSIONER DESIGNATE SIEGEL: No, I do not, because I have thoroughly reviewed them--

SENATOR RICE: Well, Mr. Dorsey, if you want to play lawyer, I am not an attorney, but I know how to play that game. I wouldn't even answer that. The reason why I wouldn't respond is because you want to find-- I mean, how can he make an assumption about me? None of you all can make an assumption about me. Do you know what? I don't even know your staff. When I do know your staff and they make a phone call about some particular thing, the question is-- It is like a cop standing before you in a blue uniform setting nothing to rest.

I just don't think those types of questions are appropriate. If the Commissioner Designate wants to respond to them, fine, but like I said, I am listening, and I am trying to be quiet. But, see, I just think it is the wrong line of questioning, because you are asking him to make assumptions on the people around him.

The question is: Are we going to terminate everybody around him? No. If we terminate them, who is coming back? A lot of political foe many of them not Civil Service, who are going to come from people in your district, or you, me, or someone else, or the Governor, or someplace, you know. So, I don't have all these folks in government. If you want to ask a question about how much knowledge he has of people's personal life and what they have in their accounts, etc., do you know what? I am willing to bet you, all of you guys who are doing well, that you have investments all over the place. That's great; that is the American way. But I don't know it. If I found out, I could care less, as long as I know it is legit. Nobody is going to question me if I can tell them about all of your investments; whether you own a summer home, an airplane, a boat, or what have you.

I just think it is wrong. If you want to respond, fine, but I want to at least be on record that I am listening. I am writing, but I am listening.

SENATOR DORSEY: Well, I think you're a pretty good attorney, Senator Rice.

SENATOR RICE: No, I am not an attorney. That is the problem.

SENATOR DORSEY: Are you going to instruct the witness not to answer the question, or are you going to say, "Answer it if you want to answer it"?

SENATOR CODEY: You have to find out his billing procedure first.

SENATOR RICE: I know if I was looking to be appointed for something, or be interviewed for a job, I would want to be as responsive as possible. I don't want anybody to think I am arrogant; I don't want anybody to think that I know something I don't know, etc. But that is the kind of stuff that puts people in those areas of presumption, okay? And those areas where politicians and others know you want-- "Why the hell don't you answer more questions?" Let them know why you're there.

That's all I'm saying. I just don't think we should do that to anyone.

SENATOR DORSEY: Well, actually it's a pretty good objection.

Do you wish to answer, Dr. Siegel?

COMMISSIONER DESIGNATE SIEGEL: At the Chairman's discretion.

SENATOR BASSANO: Your discretion.

SENATOR DORSEY: No, it's your discretion.

COMMISSIONER DESIGNATE SIEGEL: Okay. I would state very succinctly that, no, I do not believe that to be the case, because I have reviewed the records and I have found no evidence of that ever taking place.

SENATOR DORSEY: My own personal opinion is -- and let me assure, for instance, Senator Rice -- that I have investments, but I have no investments in nursing homes or hospitals, etc., etc., upon which this Committee passes. We have the peculiar circumstance here in which we have to raise the question: How blind is a blind trust? The blind trust may or may not be blind for the person who transfers his or her interest into it. But I tend to think that in this public arena in which we deal, that other people recognize that the person who transferred their interest into the blind trust, still has that interest. They may or may not be right about

that, but I cannot believe that in the real world people do not understand that and do not, in some way, react to it.

We have a very peculiar circumstance here; peculiar circumstance in which Ms. Bacon is deemed to be brilliant in these health care matters -- and I don't dispute that -- but now she plays some role in these matters, and at the same time has what appears to be a significant financial interest in how these issues play out. The question is not really whether or not she has placed it into a blind trust; whether or not from the standpoint of the public that really shields everyone from actions that may be taken on the basis that it is she who has an interest in what they are reacting to.

SENATOR RICE: Yes, but that is no different than the interests of the legislators. I mean, you know, to me it is no different than Cardinale moving MRI, and then telling me to be a full-time legislator is a conflict, and he is a dentist. I don't know what his interest is. I have to assume it is legitimate. That's all I'm saying. I don't even know what is blind out there. Maybe nothing is blind. I don't know who is related to who.

One thing I found out about politics, at least in my district, is that everybody I talk to says, "Oh well, somebody is married to somebody else," so I have to learn to keep my mouth shut. So when he says "conflict," I don't know what his interests are.

SENATOR BASSANO: Senator, let me just interrupt you. There were questions that were raised in a newspaper series that took place in this State. A lot of what is being asked today is to clarify many of the questions that came out of those articles. No one is accusing anyone of doing anything wrong. The Commissioner is explaining to us how the Department works; what the procedure is. Hopefully by the time he leaves us later on this morning, the general public will feel at ease

that everyone is being protected and no one is gaining monetarily because of undue influence.

SENATOR RICE: Right.

SENATOR BASSANO: That is the only purpose of today's hearing.

SENATOR RICE: And I support that, you know, but that is the same question when I am on the floor, that I wonder in my mind -- and I know my public wonders -- about some legislators. I just want to make sure that we do it today. I think it is valid to do that, because I want a Commissioner who at least we feel comfortable with as to his having integrity, and if there is a mess over there, he can straighten the mess out. I think that is what we are trying to get to.

SENATOR DORSEY: Excuse me. Senator Rice, I want to make it clear--

SENATOR RICE: Yes?

SENATOR DORSEY: --that that question has nothing to do with Dr. Siegel's integrity.

SENATOR RICE: No, I understand. That is why--

SENATOR DORSEY: Dr. Siegel is inserted into the position that he is in, and he is forced to accept everything that surrounds him. I mean, I am really questioning the propriety of what he is surrounded by. I am not questioning his integrity.

SENATOR RICE: Sure. That is why I am backing off, because I know that sometime before the process is over, since you are questioning that way, the final question to him is going to be: What recommendation are you going to make to respond to our concern?

SENATOR CODEY: Mr. Chairman, I just want to respond to what Senator Dorsey said. I think what Senator Dorsey just did, about a minute ago, was to raise the specter of the integrity of those two officials with regard to their investments in nursing homes being in blind trust.

SENATOR BASSANO: No, that was raised in a newspaper article, not by Senator Dorsey.

SENATOR CODEY: Right, and Senator Dorsey repeated that in a statement of about a minute ago, sir.

Now, I would like to know, Senator Dorsey, what have Mr. Salema or Ms. Bacon done wrong? I have found no evidence of wrongdoing. I have heard none this morning, and, once again, you have raised the specter that they "might have done something wrong." They had investments in nursing homes. They were put in blind trusts, as they should have been. Now, from that point on, what have they done wrong? Did they call the Department, interfere with their investments? No. There is no evidence whatsoever that those things occurred.

Please tell me what these people have done wrong.

SENATOR DORSEY: Wait a minute; wait a minute.

SENATOR SINAGRA: May I just add-- Please, I just want to add something. I am not against that. I have no questions on this, and I have no intention of asking any questions about CNS today. But I would say, as someone in the business community, that a blind trust infers no knowledge of what is in it. A blind trust, basically, to me, says that my portfolio may have IBM stock, may have AT&T stock, may have this stock, may have that stock, and I don't really know what is in there. So I can't make any decision in my position that is going to affect my trust, because I have no idea what is there.

Now, it is absolutely ludicrous -- okay? -- to say that you put a nursing home in a blind trust, and you don't forget it's there; that decisions are-- The whole concept of a blind trust is that you don't know what the investment is.

SENATOR CODEY: I have an investment. I go into government--

SENATOR SINAGRA: Maybe that is my concept of it, and that is the last thing I am going to say about CNS.

SENATOR CODEY: Well, what did they do wrong?

SENATOR DORSEY: Wait a minute.

SENATOR SINAGRA: Maybe they didn't do anything wrong, but a blind trust is a farce.

SENATOR DORSEY: Jack, are you finished?

SENATOR SINAGRA: Yes.

SENATOR DORSEY: Let me respond to Senator Codey. In the first place, he begins this entire process by saying they have done nothing wrong.

SENATOR CODEY: I have found no evidence in those articles.

SENATOR DORSEY: Excuse me; excuse me.

SENATOR BASSANO: One at a time.

SENATOR DORSEY: You made the statement that they have done nothing wrong. You make that statement on the basis that we shouldn't even begin to ask questions. Now, when I started off today, I acknowledged -- and Senator Rice was quite correct -- that we are not in a criminal proceeding here. We are in a legislative proceeding. It is not my purpose in asking questions today to convict Ms. Bacon or Mr. Salema of anything, because that is not our role.

Now, the point that Senator Sinagra just made, I think, stands out as being obvious to everyone except yourself, because we have at least three parties involved with this so-called blind trust: We have the person who transfers his interest into the blind trust. We then have people who are in this administration and have to deal directly with the interest in the applications that are submitted by the so-called blind trust. Then indeed we have Ms. Bacon advising the Governor, the administration, the Department of Health, as to policy issues that affect the interest which she transferred to the blind trust, at least in terms of long-term policy.

COMMISSIONER DESIGNATE SIEGEL: No.

SENATOR DORSEY: Now, it may well be, Senator -- it may well be -- that given the rules as we are now playing by them--

COMMISSIONER DESIGNATE SIEGEL: That's not right. That's not true.

SENATOR DORSEY: --that neither Ms. Bacon nor Mr. Salema have done anything "wrong." It may very well be that the system into which Dr. Siegel is inserted to be Commissioner, and the system and the rules by which Ms. Bacon and Mr. Salema play, are not appropriate; that they do not make any attempt -- not they personally-- The system makes no attempt to bring about a higher degree of ethical standards.

Now, I could quote to you something that Governor Florio said about that, but I think most people would agree, without saying that Ms. Bacon or Mr. Salema have done anything wrong, without saying that they have violated any ethical rules issued by this Legislature or by the Governor, that there is an appearance of a conflict of interest. We can all argue very strenuously over what is an appearance of impropriety or an appearance of conflict.

So the point that we are trying to get at is not that they have created crimes. The point we are getting at is that the system that permits to happen what has happened here, may, in itself, be improper.

SENATOR CODEY: Mr. Chairman, just let me respond to that. John, what would you do: A Governor gets elected. He has investments, say, in a nursing home, a hotel business, and so forth and so on. He is going to have to make judgment and policy decisions in all of those areas. You raise the specter of a conflict. You cannot get away from it. They have followed the law. The law is good; it is the way it should be. You cannot change it; there is no way to change it.

You put your assets in a blind trust. They still exist. The public knows that you still have to make policy judgments in those areas. What--

SENATOR DORSEY: Excuse me. There is a major difference here between Governor Florio, or any Governor--

SENATOR CODEY: Right.

SENATOR DORSEY: --and Ms. Bacon and Mr. Salema, in that neither of the last two were elected to office. The Governor was elected to office. These people are appointed to office, and the public does not have an opportunity to pass upon their degree or level of ethics or morality.

SENATOR CODEY: And we have done that for them.

SENATOR DORSEY: Well, I--

SENATOR SINAGRA: I really hate to switch gears, but--

SENATOR CODEY: And they have followed the law.

SENATOR BASSANO: Senator Sinagra has questions.

SENATOR SINAGRA: --I would like to ask some questions that I think most people would be interested in. (laughter)

You know, Doctor, I would like to get to health questions.

SENATOR CODEY: I don't know if they are interested in that, Jack.

SENATOR SINAGRA: You know, tuberculosis recently made the headlines, the front page of "Newsweek." There is a lot of concern in the medical community about drug resistant strains. It is certainly the new epidemic of the '90s. How do you, as Commissioner of Health in the State of New Jersey, intend to tackle this very--

COMMISSIONER DESIGNATE SIEGEL: The most critical thing that we need to do is, first of all, realize that: a) tuberculosis has come back, and that that should never have happened; and b) it is very much intertwined with the HIV/AIDS epidemic. There is a huge amount of overlap. The fact is, recently the CDC changed their diagnosis, their criteria for AIDS, to include pulmonary tuberculosis as one of the criteria that can help to get you into the category of AIDS.

One of the things that I am going to be pushing for in the Department -- and I am going to be seeking your support on over, you know, the coming months -- will be to take a serious, hard look at the amount of resources we put into the case management of people with multiple drug resistant TB, and TB in general. TB, in and of itself, is an expensive disease, and something which somebody has to take drugs for 12 months or 18 months for, depending on the particular case, which is very difficult for them to do very often, take two drugs for that period of time. When you get to multiply drug resistant TB, which is often, probably, an outgrowth of the fact that the people with regular TB haven't finished their courses of antibiotics, you get into a situation where somebody has to take five drugs for a year or more, and you have a potential fatality rate of 50 percent.

We need case managers out there in our communities making sure that these people take their drugs. It sounds very mundane, but it is a critical part of any initiative to control tuberculosis. I think one of the things that worries me is that we often think of TB as being an "urban" problem only. TB can be in a lot of different places. Not all of the cases in our State are confined to any one area, so I think it is a problem for all of us.

SENATOR SINAGRA: You mentioned, of course, the general classification of AIDS. Recently the Governor's, I guess Panel, or Council on AIDS Prevention, in dealing with it, recommended something that was controversial, which it appears the Governor is backing off of, and that is the distribution of condoms in schools. Can I hear from you, as Commissioner of Health, how you feel about AIDS and--

COMMISSIONER DESIGNATE SIEGEL: About that, yes. You know, one of the problems with looking at any kind of recommendations around AIDS education in schools, is that immediately everybody focuses on condoms. They focus on this,

you know, small latex thing, rather than focusing on the need for having a real comprehensive quality education curriculum in place in our schools that teaches people how to take care of themselves to prevent a variety of things, including AIDS. That is the real issue.

Now, should we take a look at distributing condoms in schools? We should take a look at it. Should we mandate it? I am not ready to go to that stage yet, because I have never had a conversation with a school board in New Jersey, or anyplace else. I have never known what their dynamics are like. Therefore, I don't think I am at the stage where I can say, "I believe that you should be forced to do this." I would rather have that conversation first, and then take it from there.

SENATOR SINAGRA: Can you tell us how the implementation of the Health Care Reform Act is going?

COMMISSIONER DESIGNATE SIEGEL: It's a bumpy road, as many of you may know. You know, we have had a number of regulatory brouhahas over a variety of features of it, including the response of the industry, which I think any observer would have foreseen, such as, you know, more discounting and pressure from a variety of insurance companies, including Blue Cross/Blue Shield. There was lots of press on that. We have seen also a real concern raised that urban hospitals -- over their position, something that we have tried to be responsive to, and the Governor will try to be responsive to in his budget in terms of setting up some sort of hospital transition fund. You may have seen some of the news on that.

So, it is going along pretty much as I expected. I mean, bumpy, but going along, yes.

SENATOR SINAGRA: There seems to be a lot of controversy about the cap.

COMMISSIONER DESIGNATE SIEGEL: The cap, yes.

SENATOR SINAGRA: Wasn't the intent of the bill to allow hospitals to collect 1992 revenues, and that would include the 19.1 percent surcharge?

COMMISSIONER DESIGNATE SIEGEL: Yes.

SENATOR SINAGRA: Is it your Department's intention to, when those final 1992 numbers come out -- to revise the caps before any penalties are assessed?

COMMISSIONER DESIGNATE SIEGEL: We are going to take a close look at that. I don't know yet whether I have the legal ability to do that under the language laid out in the Health Care Reform Act.

SENATOR SINAGRA: Doesn't the Reform Act language say 1992 revenues?

COMMISSIONER DESIGNATE SIEGEL: It says very clearly that you cannot exceed your '92 PCB -- provisional cost base. Now, there are a number of hospitals in the State that have raised the issue of, "Well, my '93 PCB is going to be much higher, because I just opened a new wing," or, "40 new beds." That is a legitimate issue. I don't blame them for being upset about that. I would be, too, as a hospital CEO. Now, will I be able to reflect that and adjust for that in any kind of audit methodology after the fact? I just honestly don't know that yet. Would I like to? Yes. Do I have the legal flexibility? That is something my lawyers and the AG would have to talk about, to see if we can do that.

SENATOR MATHEUSSEN: I would like to follow-up, through the Chair, if I may?

SENATOR BASSANO: Go ahead, please.

SENATOR MATHEUSSEN: Correct me if I am wrong. I was that guy who had that, you know, position at 10:30 at night to make a decision on the Health Care Act, so I studied the issue very closely. It is still one that is very sensitive to me and to the number of hospitals that surround my district. I think

the thing that they are most focused on is either the response, or the confusion that they have on that cap -- on that revenue cap.

Specifically, Doctor, if you could, tell me, is that at a minimum they are using the 1992 revenue for that cap?

COMMISSIONER DESIGNATE SIEGEL: They are using a number called the '92 PCB for that cap. The issue comes to this: The total amount of dollars in that cap, I think -- I think -- a lot of hospitals would say is probably a right number. That is not the problem. The problem is language in the bill. I think it was inserted -- I am not sure whether it was this Committee or the Assembly Committee; I don't remember the process that well -- that it says your cap-- The amount you collect cannot exceed your '92 PCB. That puts the kabosh on the individual hospital situation so that the total statewide dollar figures are probably fine. The problem is for that one individual hospital which -- in response to Senator Sinagra's question -- is opening a new service; which has some special circumstance going on. That becomes the problem, and a legitimate problem that has been brought to us.

I want to just reference that: In the discussions over the cap at the Rate Setting Commission, we listened very closely to the industry and took their opinions very closely, as much as we felt we could, without violating the amendment that was put into the bill. So in the first instance, after listening to their technical issues, we raised the cap by \$100 million statewide. After another round of review, we proposed another cap that was \$460 million above that. So the cap was lifted quite a bit during the Rate Setting Commission's circumstance. However, I do think that there will be a few hospitals with legitimate issues regarding their individual situations. I am not sure that the bill really fully recognizes that.

SENATOR MATHEUSSEN: Have you begun, at least, to make an analysis and to sit down with those hospitals that have legitimate concerns? If you have, when will you be able to come back with an answer?

COMMISSIONER DESIGNATE SIEGEL: Absolutely. I think within the next month or two I will have a much better answer to talk about that, but we are going to have to do a whole regulatory process around the audit methodology.

SENATOR MATHEUSSEN: Are you planning on taking the initiative to come to the Legislature to make any corrective amendments that need to be done in order to rectify the problem?

COMMISSIONER DESIGNATE SIEGEL: If we cannot handle it through regulation, and I don't want to do law through regulation--

SENATOR MATHEUSSEN: No, I agree.

COMMISSIONER DESIGNATE SIEGEL: I want to be very careful about not overstepping, you know, what you do. I will clearly let you know that, here, here is a real problem.

SENATOR MATHEUSSEN: Well I, quite frankly, respect that opinion. I viewed the entire legislative process, which you became a very major participant in last year with regard to this Act, as being one that was very nonpartisan, or bipartisan, whatever you like, and one that dealt with not only the legislative branch, but the executive branch, you being part of the executive branch, and really having a key role in it. We listened to industry; we listened to the executive branch and the legislative branch, and we came up with what hopefully was the best consensus of a bill that could work.

But, I am very concerned that the hospitals do have legitimate gripes, and I want to make sure that we can address them, and address them very quickly before we have more damage done than good.

On that same vein, it seems that the revenue caps -- the calculation for the revenue caps also may have concerned subsidy distribution, as well.

COMMISSIONER DESIGNATE SIEGEL: Right, right.

SENATOR MATHEUSSEN: How does that fit into the scope of the revenue caps?

COMMISSIONER DESIGNATE SIEGEL: We, first of all, should realize that the subsidy dollars that will flow to hospitals will not be counted against their cap. It will be completely outside of their cap.

SENATOR MATHEUSSEN: Okay.

COMMISSIONER DESIGNATE SIEGEL: Which gives them a lot more leeway in the amount of money they can collect.

SENATOR MATHEUSSEN: Address it also with regard to calculating the cap, if you would.

COMMISSIONER DESIGNATE SIEGEL: The same PCB numbers that were used in calculating-- (Committee members talking among themselves at this point)

SENATOR MATHEUSSEN: Excuse me. Mr. Chairman, if I may, I think this is very important. I would like, if I could, to just have--

COMMISSIONER DESIGNATE SIEGEL: We are trying to follow, you know, a commonsense approach of looking at the law, looking at the formulas that were very explicit in the law about calculating Uncompensated Care subsidy and the Medicare subsidies, and carrying those out.

Now, are there some unhappy campers in there? Yes. In a distributional situation where there is a limited pot of money fixed -- \$500 million of Uncompensated Care -- some folks get it, some folks don't-- Not everybody is going to be happy with that. There will clearly be the sort of inter-hospital fights over that distribution.

SENATOR BASSANO: Let me interject something, if I may. You may recall when we went through the Health Care Reform legislation that the hospitals were looking for \$1.2 billion. At that time my position was that when we were

taking care of Uncompensated Care, it was not our direction to do Medicare/Medicaid shortfalls--

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR BASSANO: --which was part of that \$1.2 billion.

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR BASSANO: There is now hope for some additional money going toward the Medicare/Medicaid problems.

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR BASSANO: Do you feel comfortable, based upon the figures you are seeing tossed around, that the urban hospitals are going to do fairly well, and not start to close their doors?

COMMISSIONER DESIGNATE SIEGEL: Yes. I think we are in a much better position than we were a couple of months ago. I think especially the recent initiative which we presented in the budget regarding a hospital transition fund of \$160 million going out to high need hospitals on the basis of the kinds of patients they treat, will go a long way towards addressing those problems.

SENATOR BASSANO: Doctor, I have a number of questions on the State Health Plan, possibly even on nursing homes again, that I would like to address. I don't want to hold up the process, because I know the Judiciary Committee is waiting to interview you.

I would like you, once you are confirmed as Commissioner, to come back to answer some of those questions, if you would. The hour is getting late. I would like to entertain a motion to have you released from our Committee so that you can go to the Judiciary Committee, with the understanding that you will come back and answer some of our questions at a later date.

COMMISSIONER DESIGNATE SIEGEL: Absolutely.

SENATOR MATHEUSSEN: Mr. Chairman, you cut me off in the middle of one of my questions. May I finish that question first?

SENATOR BASSANO: I will let him finish. Then we will entertain the motion.

SENATOR MATHEUSSEN: Then I will be happy to even second the motion.

SENATOR BASSANO: Okay, that's fine.

SENATOR MATHEUSSEN: I won't make it, but I'll second it.

Just so that I have a clear understanding, the hospitals should not be concerned that -- they are telling me, so it is second party -- they are getting directives, or at least some information from your Department that they are not to be using the 1992 preliminary figures with regard to the calculation of their caps. Is it that we are using the 1992 preliminary figures for the calculation of the caps?

COMMISSIONER DESIGNATE SIEGEL: The cap numbers have clearly been promulgated and are set and are public information. They have those things, yes.

SENATOR SINAGRA: But once you have had--

SENATOR MATHEUSSEN: And we will adjust them, because we don't have the full figures in. We don't have the fully audited figures in.

COMMISSIONER DESIGNATE SIEGEL: I am trying to say that we will try to do everything we can, through the regulatory process, not to penalize these people. I can't honestly say to you that I will just adjust them to reflect whatever, because I don't know whether all those things would be legal.

SENATOR MATHEUSSEN: I understand that, but I just want to make sure that the equation is correct and that they have the correct understanding. But, most importantly, I guess, and what I am very pleased to hear from you today, is

the fact that there will be an ongoing spirit of cooperation, just as we did at the end of 1992 to get the Act to where it is now. I don't want to continue to be a go-between between your office and the legislative branch to make sure we correct that.

COMMISSIONER DESIGNATE SIEGEL: Right.

SENATOR SINAGRA: But it would be logical to adjust them for actual '92 revenue--

SENATOR MATHEUSSEN: Oh, absolutely.

SENATOR SINAGRA: --before any penalty is assessed. I mean, I would assume that is fast.

SENATOR MATHEUSSEN: Yes, you have to have--

COMMISSIONER DESIGNATE SIEGEL: I wouldn't disagree with that. The only thing is, there is this little line that somebody stuck in that bill that says, very explicitly, "the '92 provisional cost base," and that is going to be the problem. That is what both of us are going to have to confront.

SENATOR SINAGRA: I make that motion to release--

SENATOR MATHEUSSEN: Is it a provisional or a preliminary cost base?

COMMISSIONER DESIGNATE SIEGEL: Preliminary. I'm sorry, preliminary. You're absolutely right.

SENATOR BASSANO: Do you want to make that motion?

SENATOR SINAGRA: I absolutely do.

SENATOR BASSANO: Is there a second to the motion to release Dr. Siegel?

SENATOR RICE: I second the release.

SENATOR BASSANO: Can we have a roll call?

SENATOR RICE: This is only a furlough, though, right?

SENATOR BASSANO: He'll be back. He'll be back as Commissioner.

SENATOR SINAGRA: Now he goes to the tough Committee.

MS. SEEL: Senator Rice?

SENATOR RICE: Yes.

MS. SEEL: Senator Codey?

SENATOR CODEY: Yes.

MS. SEEL: Senator Sinagra?

SENATOR SINAGRA: Yes.

MS. SEEL: Senator Dorsey?

SENATOR DORSEY: Yes.

MS. SEEL: Senator Matheussen?

SENATOR MATHEUSSEN: Yes.

MS. SEEL: Senator Bassano?

SENATOR BASSANO: Doctor, I am going to vote, "Yes."

I want you to know that we are releasing you today. We were nice to you today. We are going to be tough next time.

COMMISSIONER DESIGNATE SIEGEL: Fair enough. Thank you.

SENATOR CODEY: We may talk about health next time.

SENATOR BASSANO: This meeting is adjourned.

**(MEETING CONCLUDED)**

