NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 25, 2010

3:12 p.m.

REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BRESLIN: The Senate will please come to order.

I ask all to rise and recite the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT BRESLIN: In the absence of clergy, may we bow our heads for a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT BRESLIN: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Sunday, January 24, the Senate met pursuant to adjournment. The Journal of Saturday, January 23, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT BRESLIN: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332.

Pending the return of the Rules Committee, may we please stand at ease.

ACTING PRESIDENT BRESLIN: There will be an immediate meeting of the Senate Rules Committee in Room 332.

Pending the return of the Rules Committee, the Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:13 p.m.)

(Whereupon, the Senate reconvened at 3:41 p.m.)

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's a report of the Rules Committee at the desk. I move to adopt the report of the Rules Committee at this time.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Senator Smith, from the Committee on Rules, reports the following bill direct to third reading: Senate Print 4480C, by Senator Dilan, an act to amend Chapter 549 of the Laws of 1994, amending the Public Authorities Law.

ACTING PRESIDENT BRESLIN: All those in favor of accepting the Rules Committee report please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The report of the Rules Committee is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we please move to a reading of

the calendar.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 11, by Senator Hassell-Thompson, Senate Print 4018, an act to amend the Penal Law, in relation to assault.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of November.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: To explain my vote.

I vote no --

ACTING PRESIDENT BRESLIN: Oh, excuse me. We'll call the roll first.

Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, you may explain your vote.

SENATOR DeFRANCISCO: I vote no, as I do always on these bills, because if you look at the number of people that this offense turns out to be a felony for, the assault offense, this just about covers everybody, I think, except legislators and Ray in the food room.

So I'm voting no not because nurses are not worthy of getting this treatment, if there's an assault on them, to get it to the felony. But if we've got so many different people or different occupations that are included, it really should include everybody and just raise the assault offense up to assault that's a felony assault rather than having the receptions eat up a general rule.

Thank you.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco will be recorded in the negative.

Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

I rise to indicate my support of this bill, not just as a person who is the sponsor of the bill, but also as a former nurse who has done emergency room medical services.

And just for the record, I'd just like to add something to the record. The fact that RNs and LPNs have the highest proportion of injuries to healthcare workers, according to the U.S. Department of Justice, nearly a half million nurses per year of victims of violent crimes in the workplace.

The other thing that I'd like to just indicate for the record also is that historically nurses, which is a female-dominated profession, has not been considered as dangerous as traditionally male-dominated professions, such as law enforcement --

ACTING PRESIDENT BRESLIN: Excuse me, Senator Hassell-Thompson.

May we have some quiet. Thank you.

SENATOR HASSELL-THOMPSON: -- such as law enforcement officers, as well as

our firefighters.

I think that this bill is important because the risk of violent attack is a big factor in the shortage of nurses that is facing the State of New York as well as nationally.

Thank you, Mr. President. I vote aye.

ACTING PRESIDENT BRESLIN: Thank you, Senator Hassell-Thompson.

Senator Hassell-Thompson will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 57. Nays, 1. Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 12, by Senator Stachowski, Senate Print 4550, an act to amend the Criminal Procedure Law, in relation to expanding.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of the calendar month next succeeding.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 13, by Senator Schneiderman, Senate Print 4667 --

SENATOR KLEIN: Mr. President, can we lay the bill aside for the day.

ACTING PRESIDENT BRESLIN: The bill is laid aside for the day.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 14, by Senator Montgomery, Senate Print 2969, an act to amend the Public Health Law, in relation to death certificates.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President.

This is one piece of legislation that I have to vote against just because I don't believe that -- even though, Mr. President, even though I do believe that nurse practitioners, they do a great job. But to equalize them to a doctor and to take the doctor's authority away to be given to a nurse practitioner I don't think is right.

I think that nurse practitioners

should keep doing what they're doing. And doctors, they went to college and they graduated and they have a license to do this. And that's why I'm voting against the bill.

ACTING PRESIDENT BRESLIN: Thank you, Senator Diaz.

Senator Diaz will be recorded in the negative.

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. I am voting for this. As a matter of fact, I'm the sponsor of this, along with a number of my colleagues: Senator Duane, Senator Hassell-Thompson, Senator Liz Krueger, Senator Onorato, Senator Oppenheimer, Senator Parker, Senator Perkins, Senator Stewart-Cousins, and Senator Thompson.

And we have introduced this bill and are very pleased that it's being considered today because --

ACTING PRESIDENT BRESLIN: Excuse me, Senator Montgomery.

Can we please have some quiet.

SENATOR MONTGOMERY: Because as we know, nurse practitioners are an extremely important and central, pivotal member of the health delivery system in our state. And fortunately they have been really the backbone in many areas, especially with health to children, school-based health clinics, they run them. And they care for the elderly a lot and are in attendance, very often, when people pass away.

This is the health professional that's there on-site. And what we're doing today is making sure that at the end of life, this particular health professional, nurse practitioners, who are adequately trained -- they diagnose, they treat -- they can also now, with this legislation, be able to actually sign the death certificate.

So thank you, Mr. President. And certainly I support the legislation.

ACTING PRESIDENT BRESLIN: Thank you, Senator Montgomery.

Senator Montgomery will be recorded in the affirmative.

Senator Perkins, to explain his vote.

SENATOR PERKINS: Thank you, Mr. President.

I just wanted to echo the remarks of my colleague and fellow sponsor Senator Montgomery with respect to this bill.

You know, we have here some of the unsung heroes and sheroes of the medical profession who are, to say the least, worthy of this kind of recognition by virtue of their practices, by virtue of their skills.

And frankly, for those who have any reservations, clearly where there needs to be a challenge there are ways in which any mistakes that may have been made or any considerations for a second opinion can be done.

So I don't see any reason why we should not be passing this legislation to allow them to have the authority that this bill offers. And I would daresay as many cases as with respect to regular practitioners, regular doctors, they would be

accurate.

And so I want to again join my colleague in support of this legislation, and I want to say I vote aye.

ACTING PRESIDENT BRESLIN: Thank you, Senator Perkins.

Senator Perkins will be recorded in the affirmative.

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Thank you, Mr. President.

I just wanted to straighten something that was said earlier by Senator Diaz.

Right now, Senator Diaz said that it was only doctors that could sign these death certificates. As it happens to be, the mortician or the undertaker can also sign them. And they do not have the medical background that doctors and nurse practitioners have.

I think we should note that in five states, nurse practitioners do sign these

death certificates. And indeed they are the states around us, in Connecticut, in New Jersey, as well as other states.

And the fact is that in some of our rural areas, and indeed in some of our inner cities, it is not so easy to find a doctor readily available. And nurse practitioners are usually more available, more on the spot, and more with the patient and, in this case, the deceased patient.

So I firmly believe that this will be a big improvement. And I hope we will pass it, and I vote aye.

ACTING PRESIDENT BRESLIN: Thank you, Senator Oppenheimer.

Senator Oppenheimer will be in the affirmative.

Senator Farley, to explain his vote.

SENATOR FARLEY: Thank you.

I rise in support of this bill, as somebody that has four counties, some of which are very rural. I used to have Hamilton County in my Senate district, in the last

reapportionment.

Let me just say in many of those counties up in the Adirondacks, they don't have a doctor, they only have nurse practitioners providing all the medical care. And for a doctor to go hundreds of miles to sign a death certificate is a little bit ridiculous.

I understand that the Medical Society might consider this some sort of a turf situation. But this is really a practical piece of legislation, particularly for the rural areas, as was mentioned. And I rise in support of it.

ACTING PRESIDENT BRESLIN: Thank you, Senator Farley.

Senator Farley will be recorded in the affirmative.

Senator Duane, to explain his vote.

SENATOR DUANE: Thank you very much, Mr. President.

This is an excellent bill. As I think many of us know, currently nurse practitioners, they do everything but sign the

death certificate. They pronounce that someone has died, they mark the time, they in many cases determine the cause of death. And this really is a change in the law whose time is long overdue.

And, you know, as we continue to transform our healthcare system, we're doing it when there is unfortunately a lack of healthcare personnel in many parts of the state, interestingly in rural and in urban areas. So it's a similar problem. And allowing nurse practitioners to sign the death certificate just makes sense.

And so because this bill is so long overdue, I'm very pleased that Senator Montgomery worked to get this bill to the floor. And I am in total agreement and very pleased to vote in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Duane.

Senator Duane will be recorded in the affirmative.

Senator Hassell-Thompson, to

explain her vote.

SENATOR HASSELL-THOMPSON: Thank you again, Mr. President.

I think that one of the concerns that we need to put to rest is whether or not nurse practitioners have the training that's necessary to be able to do the job that this bill is asking of them to do.

This is not your standard nurse on bedside nursing duty, but these are nurses who have had additional training and are very close to almost having their doctorate in medicine. Some of them are just shy of having at least the educational training, and certainly many of them have had more experience.

I think the thing that becomes important for us to remember is that if we're talking about New York City, we have the advantage of having coroners and a large staff that is capable of providing this service. But in rural areas, there are not as many doctors available.

And the death certificate is not

something that you would do on a strange death or a sudden death. These death certificates are based upon chronic illnesses, where there is an awareness that death is imminent.

So I think that we need not confuse what the reality is here, that these are well-trained people who have as much -- as in many cases they have more experience than some of the doctors even have in terms of the patients that they see, even if they don't have the M.D. credentials.

So I think that we really need in these chambers to become a little bit more updated about the sophistication that has occurred in the nursing profession, and then we would be more enlightened when these bills come before our desks.

Thank you, Mr. President. I will be voting in the affirmative.

ACTING PRESIDENT BRESLIN: Thank you, Senator Hassell-Thompson.

Senator Hassell-Thompson will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 14 are Senators Diaz, Golden and Lanza.

Ayes, 56. Nays, 3.

ACTING PRESIDENT BRESLIN: The bill is passed.

Senator Klein, that completes the reading of the noncontroversial calendar.

SENATOR KLEIN: Mr. President, at this time can we have a reading of the supplemental calendar.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 15, by Senator Dilan, Senate Print 44 --

SENATOR KLEIN: Lay it aside for the day, please.

ACTING PRESIDENT BRESLIN: The bill is laid aside for the day.

Senator Klein, that completes the reading of the supplemental calendar.

SENATOR KLEIN: Mr. President, at this time can we return to the order of motions and resolutions.

I believe Senator Sampson has three resolutions at the desk. I ask that the title of the resolutions be read and move for their immediate adoption.

ACTING PRESIDENT BRESLIN: Senator Klein, have these three resolutions been deemed privileged and submitted to the office of the Temporary President?

SENATOR KLEIN: Yes, Mr. President, they have.

ACTING PRESIDENT BRESLIN: Thank you, Senator Klein.

The Secretary will read.

THE SECRETARY: By Senator Sampson, Senate resolution establishing a plan sitting forth an itemized list of grantees for the New York State Economic Development Assistance Program established pursuant to an appropriation in the 2008-2009 state fiscal year and in Part QQ of Chapter 57 of the Laws of 2008.

ACTING PRESIDENT BRESLIN: The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays 0.

ACTING PRESIDENT BRESLIN: The resolution is adopted.

The Secretary will continue to read.

THE SECRETARY: By Senator Sampson, Senate resolution amending a plan setting forth an itemized list of grantees for the New York State Economic Development Assistance Program established pursuant to an appropriation in the 2008-2009 state fiscal year and in Part QQ of Chapter 57 of the Laws of 2008.

ACTING PRESIDENT BRESLIN: The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 0.

ACTING PRESIDENT BRESLIN: The resolution is adopted.

The Secretary will continue to

read.

THE SECRETARY: By Senator Sampson, Senate resolution amending a plan setting forth an itemized list of grantees for the New York State Economic Development Assistance Program established pursuant to an appropriation in the 2008-2009 state fiscal year and in Part QQ of Chapter 57 of the Laws of 2008.

ACTING PRESIDENT BRESLIN: The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 0.

ACTING PRESIDENT BRESLIN: The resolution is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, before we proceed, would you please recognize Senator Montgomery for just a brief announcement.

ACTING PRESIDENT BRESLIN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

It gives me great pleasure and pride to acknowledge one of our former colleagues, some of us who served with him a few years back when he was here, who is now mayor of the City of Buffalo.

Former Senator, currently mayor of Buffalo, welcome, Senator Byron Brown.

ACTING PRESIDENT BRESLIN: You'll always be our Senator, Senator Byron Brown.

(Applause.)

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Mr. President, can you please recognize Senator Libous for another brief announcement.

SENATOR LIBOUS: Mr. President, do you recognize me?

(Laughter.)

ACTING PRESIDENT BRESLIN: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

There will be an immediate Republican conference following session.

ACTING PRESIDENT BRESLIN: Immediately following session, there will be a Republican conference in the Republican Conference Room.

Senator Klein.

SENATOR KLEIN: Mr. President, is there any further business at the desk?

ACTING PRESIDENT BRESLIN: Senator Klein, the desk is clear.

SENATOR KLEIN: There being none, I move that we adjourn until Tuesday, January 26th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT BRESLIN: There being no further business, on motion, the Senate stands adjourned until Tuesday, January 26th, at 3:00 p.m.

(Whereupon, at 4:00 p.m., the Senate adjourned.)