

NOTICE OF PUBLIC HEARING

- Subject:** Opportunity to Comment on the Proposed Amendment of Article 181 (Protection of Public Health Generally) of the New York City Health Code, found in Title 24 of the Rules of the City of New York.
- Date/Time:** July 23, 2012 / 10 A.M. to 12 P.M.
- Location:** New York City Department of Health and Mental Hygiene
2 Gotham Center, 14th Floor, Room 14-43
42-09 28th Street
Long Island City, NY 11101-4132
- Contact:** Rena Bryant
(347) 396-6071

Instructions

Prior to the hearing, you may submit written comments about the proposed amendment by mail to

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Center, 14th Floor, Room 14-15, Box 31
Long Island City, NY 11101-4132

or electronically through NYC RULES at <http://www.nyc.gov/html/nycrules> or by email to RESOLUTIONCOMMENTS@HEALTH.NYC.GOV or online (without attachments) at <http://www.nyc.gov/html/doh/html/notice/notice.shtml> on or before 5:00 P.M., on July 23, 2012.

To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number shown above by July 9, 2012.

Copies of written comments and a summary of oral comments received at the hearing will be available within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at the

New York City Department of Health and Mental Hygiene
Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Center, 14th Floor, Room 14-15, CN 31
Long Island City, NY 11101-4132

Proposed Amendment

The Department of Health and Mental Hygiene is proposing that the Board of Health amend Article 181 of the Health Code to add a new §181.21 to require written consent for performance of circumcision when such circumcisions involve the performance of direct oral suction. This proposal was not included in the Department's Regulatory Agenda for FY '12 because the Department did not determine that it was needed until after the Regulatory Agenda was promulgated.

Statement of Basis and Purpose

Statutory Authority

These proposed amendments to the Health Code are promulgated pursuant to §§ 558 and 1043 of the Charter.

- Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the authority of the Department of Health and Mental Hygiene (the “Department” or “DOHMH”) extends.
- Section 1043 grants the Department rule-making authority.

The amendment is also proposed pursuant to the Department’s historic power to supervise the control of communicable disease in New York City. Section 556 of the Charter provides the Department with broad jurisdiction to regulate all matters affecting health in the City of New York. The control of communicable disease is a core public health function.

Purpose of the Proposed Amendment

The purpose of the proposed amendment is to require informed consent from a parent or legal guardian when direct oral suction will be performed during his or her son’s circumcision. A written informed consent will be required, which would provide information about the risks involved, including possible infection with herpes simplex virus and its potentially serious consequences, such as brain damage and death. Knowing the risks posed by direct oral suction, a parent or legal guardian can then make an informed choice about whether it should be performed as part of the circumcision.

The proposed amendment will require practitioners of oral suction during circumcision to retain copies of informed consent forms for at least one year and to make them available to the Department upon request.

Background

Male circumcision, which involves cutting off skin and leaving an open wound on the penis, carries a risk for infection, bleeding and penile injury to infants under 60 days of age. Therefore circumcision should be performed under sterile conditions to protect the open wound from infection. A practice known as *metzitzah b’peh*, involves direct contact between the mouth of a person performing circumcision and the infant’s circumcised penis (‘direct oral suction’). When direct oral suction is performed as part of circumcision, there is a risk that the person performing direct oral suction will transmit herpes simplex virus or other infectious disease to the infant being circumcised.

Between 2004 and 2011, the Department learned of 11 cases of laboratory-confirmed herpes simplex virus infection in male infants following circumcisions that were likely to have been associated with direct oral suction. Two of these infants died, and at least two others suffered brain damage. The parents of some of these infants have said that they did not know before their child’s circumcision that direct oral suction would be performed. In addition, since 2004, the Department has received multiple complaints from parents whose children may not have been infected who were also not aware that direct oral suction was going to be performed as part of their sons’ circumcisions.

The proposed amendment

A new Health Code provision, §181.21 -- Consent for direct oral suction as a part of circumcision, would require that if direct oral suction is to be performed as part of a circumcision, the person performing the direct oral suction must obtain prior written informed consent from a parent or legal guardian. The written consent would document that a parent has been given notice that direct oral suction is to be performed and that the parent has been informed of the risk of transmission to the infant of herpes simplex virus infection and other diseases. A copy of the signed consent form would have to be given to the parent or legal guardian signing the consent, and the person performing direct oral suction as part of the circumcision would have to maintain the original for at least one year after the circumcision is performed, and make it available for inspection at the request of the Department.

The proposal is as follows:

Note- matter in [] brackets to be deleted;

Matter underlined is new.

RESOLVED, that Article 181 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, and the same hereby is, amended, by adding a new §181.21, to be printed together with explanatory notes, to read as follows:

§ 181.21 Consent for direct oral suction as part of a circumcision.

(a) Direct oral suction means contact between the mouth of a person performing a circumcision and the infant's circumcised penis.

(b) Written informed consent required. A person may not perform a circumcision that involves direct oral suction on a child under one year of age without obtaining, prior to the circumcision, the written informed consent of a parent or legal guardian of the child who is being circumcised in a form approved or provided by the Department. The written informed consent must include notice that direct oral suction exposes the infant to the risk of transmission of herpes simplex virus infection and other infectious diseases.

(c) Retention of consent forms. The person performing the circumcision must give the parent or legal guardian a copy of the signed consent form and retain the original for one year from the date of the circumcision, making it available for inspection if requested by the Department.

Notes: §181.21 was added to Article 181 by resolution adopted XXX to require that persons who perform circumcisions on children under one year of age that involve the application of direct oral suction obtain the written informed consent of a parent and warn of the risks of infection posed by direct oral suction prior to performance of the circumcision.

RESOLVED, that the Table of Section Headings of Article 181 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed together with explanatory notes, to read as follows:

ARTICLE 181

PROTECTION OF PUBLIC HEALTH GENERALLY

§181.01 **Definitions.**

 * * *

§181.21 **Consent for direct oral suction as part of a circumcision.**

Notes: Article 181 was amended by resolution adopted XXX adding a new §181.21 requiring written parental consent for circumcisions performed on an infant under one year of age that involve the application of direct oral suction in view of the risks of transmission of infection to such infants through the practice of direct oral suction.

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

100 CHURCH STREET

NEW YORK, NY 10007

212-788-1087

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Consent for Non-Medical Circumcision (Health Code Article 181)

REFERENCE NUMBER: 2012 RG 053

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 5, 2012

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Consent for Non-Medical Circumcision (Health Code Article 181)

REFERENCE NUMBER: DOHMH-23

RULEMAKING AGENCY: DOHMH

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco Navarro
Mayor's Office of Operations

June 5, 2012
Date