

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

**NOTICE OF ADOPTION
OF AMENDMENTS TO ARTICLE 165
OF THE NEW YORK CITY HEALTH CODE**

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Article 165 of the New York City Health Code (the “Health Code”) was published in the City Record on July 9, 2013. A public hearing was held on August 9, 2013; five persons testified and seven written comments were received. At its meeting on September 10, 2013, the Board of Health adopted the following resolution.

Statutory Authority

These amendments to the New York City Health Code (the “Health Code”) are issued in accordance with §§556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the “Department”) with authority to regulate all matters affecting health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers.

Statement of Basis and Purpose

Background of amendments

Repetitive or prolonged underwater swimming or breath-holding can be deadly. During these activities the levels of oxygen and carbon dioxide in the body can drop, delaying the breathing reflex. Coupled with the lack of oxygen to the brain, a swimmer can lose consciousness and drown. This risk is heightened when breath-holding is coupled with intentional hyperventilation or when done as a competitive activity.

The Department has identified four drowning incidents in New York City and 12 other incidents in New York State between 1988 and 2011 that were confirmed or suspected to have been caused by a loss of consciousness underwater due to lack of oxygen caused by intentional hyperventilation or by competitive, repetitive or prolonged underwater

swimming or breath-holding. Four of the sixteen swimmers involved died in incidents associated with intentional hyperventilation. Yet, many swimmers are unaware of the risks associated with these activities.

The Department has also studied relevant policies, practices and guidance of multiple jurisdictions and organizations with respect to these specific swimming behaviors. Several jurisdictions require pool operators to post signs regarding the risks associated with prolonged breath-holding activities and extended underwater swimming. These signage requirements can be found in the rules of local governmental jurisdictions that regulate pool facilities and in the policies of large governmental entities and non-governmental organizations that own and operate pool facilities. Additionally, governmental agencies and safety awareness organizations have developed guidance and educational material that promotes swimming behavior rules and/or signage requirements to reduce the risks of the above activities.

Overview of amendments

Article 165 of the Health Code addresses bathing establishments, including swimming pools. The amendments to Article 165 are intended to discourage and/or prevent swimmers from engaging in certain swimming activities that can be deadly. The amendments will require pool operators to: update their safety plan when there are programming or operational changes at the facility and/or as directed by the Department; warn swimmers that prolonged or repetitive breath-holding is dangerous and can be deadly; and to post signage warning swimmers that “Prolonged or repetitive breath-holding can be deadly. No intentional hyperventilation or underwater competitive breath-holding.”

All persons who testified at the public hearing and who submitted written comments were generally supportive of the amendments. However, one comment, from the State Department of Health, identified that the inclusion of the undefined word “conditions” in the proposed amendment to §165.19 is not necessary because changes to the conditions of a bathing establishment are properly addressed in §165.41, *General Requirements for Pools*. The Department, agreed and decided to delete “conditions” from the proposed amendment to §165.19. Also, in response to a comment made by a Board member at the June 28, 2013 meeting of the Board of Health, the signage language in §165.41(u)(2)(K) has been changed to more clearly warn that prolonged breath-holding or repetitive breath-holding can be deadly and to prohibit two types of activities, intentional hyperventilation and competitive breath-holding. This section has also been changed to allow, rather than mandate, the Department to design and require by rule that a pictogram be included on the sign.

The resolution is as follows:

Deleted material is in [brackets]; new text is underlined.

RESOLVED, that §165.19 of Article 165 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, is amended and to be published with explanatory notes, to read as follows:

ARTICLE 165

BATHING ESTABLISHMENTS

§165.19 Pool Safety Plan.

The operator[s] of a pool[s] and/or spray ground[s] shall develop, maintain and implement a written safety plan which consists of policies and procedures to be followed by the personnel during normal operation and emergencies for protecting the public from accidents and injuries. The [S]safety plan[s] must include procedures for daily bather supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan shall be approved by the department and shall be accessible for use and inspection by the department at all times. The owner or pool operator shall review the plan periodically and update the plan [whenever a change occurs in] before making any change to operations or the facility or when directed to do so by the department. Changes made to the plan shall be submitted to the department for approval before implementation.

Notes: §165.19 was amended by resolution of the Board of Health adopted on September 10, 2013 to require the pool operator to update its safety plan when directed to do so by the Department in addition to when updates are necessary because of changes in operation or programs offered at the pool.

RESOLVED, that §165.21 of Article 165 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, is amended by adding a new subdivision (l), to be published with explanatory notes, to read as follows:

§165.21 Facility Operating Policy.

* * *

(l) Prolonged or repetitive breath-holding can be deadly. Such activities are permitted only when appropriately supervised by qualified staff, as set forth in the operator’s pool safety plan. No intentional hyperventilation or underwater competitive breath-holding should be allowed.

Notes: Subdivision (l) of §165.21 was added by resolution of the Board of Health adopted on September 10, 2013 to require the pool operator to permit certain underwater activities only under supervision as described in the approved pool safety plan.

RESOLVED, that paragraph (2) of subdivision (u) of §165.41 of Article 165 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, is amended by adding a new subparagraph (k), to be published with explanatory notes, to read as follows:

§165.41 General Requirements for Pools.

(u) Safety and warning signs.

(2) Warning signs. A sign or signs shall be securely posted in a conspicuous place or places in the pool area and bather preparation facility and shall provide the following information:

(K) “Prolonged or repetitive breath-holding can be deadly. No intentional hyperventilation or underwater competitive breath-holding.”

(i) The Department may require that the sign include a pictogram designed by the Department that conveys these dangers.

Paragraph (2) of Subdivision (u) of §165.41 was amended by resolution of the Board of Health adopted on September 10, 2013 to require the pool operator to add signage providing that “Prolonged or repetitive breath-holding can be deadly. No intentional hyperventilation or underwater competitive breath-

holding.” Paragraph (2) was also amended to provide that the Department may require a pictogram designed by the Department that conveys these dangers. Section 165.41(u)(2)(k) will take effect 90 days after adoption by the Board of Health.

RESOLVED, that subdivision (u) of §165.41 of Article 165 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, is amended by adding a new paragraph (7), to be published with explanatory notes, to read as follows:

§165.41 General Requirements for Pools.

(u) Safety and warning signs.

(7) Nothing in §165.41(u) prevents the operator from posting any additional sign or adding language to required signs alerting bathers to activities that are limited or prohibited under the operator’s safety plan.

Notes: Paragraph (7) of Subdivision (u) of §165.41 was added by resolution of the Board of Health adopted on September 10, 2013 to permit operators of pools to post additional signage in its facility alerting bathers to activities that are limited or prohibited under the operator’s safety plan.