

**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
BOARD OF HEALTH**

**NOTICE OF INTENTION TO AMEND  
ARTICLE 207 OF THE NEW YORK CITY HEALTH CODE**

**NOTICE OF PUBLIC HEARING**

In compliance with Section 1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by Section 558 of said Charter, notice is hereby given of the proposed repeal of paragraph (5) of subdivision (a) of section 207.05 and amendment of Section 207.05 of Article 207 of 'Title 24 of the Official Compilation of the Rules of the New York City', (the "New York City Health Code").

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON OCTOBER 30, 2006 FROM 2:00 P.M TO 4:00 P.M. IN THE THIRD FLOOR BOARDROOM, ROOM 331 AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK (212) 788-5010 BY OCTOBER 29, 2006. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY OCTOBER 16, 2006.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 2:00 P.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, **BY MAILING TO:** 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013, OR BY **E-MAIL TO:** [RESOLUTION\\_COMMENTS@HEALTH.NYC.GOV](mailto:RESOLUTION_COMMENTS@HEALTH.NYC.GOV), OR BY **FAX TO:** RENA BRYANT AT (212) 788-4315, ON OR BEFORE OCTOBER 30, 2006.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY.

## **STATUTORY AUTHORITY**

These amendments to the New York City Health Code (the “Health Code”) are made pursuant to §§556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene (the “Department”) jurisdiction to supervise and control the registration of births. Section 558 (b), (c) and (g) of the Charter empowers the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043(a) of the Charter grants rule-making powers to the Department.

## **STATEMENT OF BASIS AND PURPOSE**

The Department of Health and Mental Hygiene (the “Department”) is responsible for supervising and controlling the registration of births in New York City.

Since 1971, New York City Health Code section 207.05(a)(5) has authorized the issuance of a new birth certificate for a transgender individual. Currently, the Health Code requires proof that the applicant has undergone “convertive” surgery, which has generally but not exclusively been interpreted by the Department to mean genital surgery. The proof required by the Department from the applicant is a detailed surgical operative record including the date of the operation; a post-operative examination signed by a physician and attesting to the fact that a surgical change of sex has taken place; and a post-operative psychiatric evaluation signed by a psychiatrist or clinical psychologist. In addition, the name of the applicant must also have been changed pursuant to court order. At present, upon approval of the application, the new birth certificate reflects the court-ordered name change and omits a gender designation. The certificate itself is not marked “amended,” and the original birth record is placed under seal.

New York City had been a leader in the early 1970s in this area, but it has not amended this section of the Health Code since enacted and therefore, it continues to require proof the applicant has undergone convertive surgery and issue new birth certificates omitting a gender. Although, other jurisdictions that amend a birth certificate to reflect a person’s gender indicate the acquired gender on the certificate, New York City does not.

Over the past several years, advocates for transgender individuals have expressed concern that the current rules are outdated and do not reflect the individualized modes of transgender healthcare that may or may not include genital surgery. To address these concerns the Department convened an external committee of transgender health experts to provide advice and recommendations on updating policies and procedures. The group was comprised of eight members representing transgender expertise in medical, surgical, mental health, legal and academic fields. Each representative had extensive experience in transgender health care, practice or policy. Department staff from the Bureau of Vital Statistics and the General Counsel’s office also participated.

The major concerns raised by advocates and transgender health experts concerning current New York City practice in providing a new birth certificate were:

- It excludes transgender persons who have undergone procedures short of genital surgery, including hormonal treatments;
- It does not take into account the highly individualized care transgender persons undergo; and
- By providing a new birth certificate without a gender designation, it potentially stigmatizes transgender persons and fails to provide the gender evidence they seek.

The group recommended that:

- The Department should recognize the individualized nature of transgender health care;
- Medical and mental health providers most knowledgeable about an individual's transgender health should determine whether an individual is living fully in the acquired gender;
- The Department should specify the qualifications of professionals from whom evidence would be accepted;
- The evidence should be detailed enough to ensure its integrity and validity, and to demonstrate the intended permanence of gender transition; and
- The new birth certificate should reflect the acquired gender of the applicant.

Based on the Department's review of these issues, it is proposing that the Board of Health amend the Health Code as set forth below. The Department acknowledges the gravity of changing the gender on a birth certificate and believes this change is justified in particular instances when supported by documentary evidence.

The proposal is as follows:

Note - matter in brackets [] to be deleted  
matter underlined is new

**RESOLVED**, that paragraph (5) of subdivision (a) of Section 207.05 of the New York City Health Code as last amended by resolution, on the sixteenth day of December nineteen hundred and seventy-one, be and the same hereby is repealed:

**§ 207.05 Correction of records; filing of new birth certificates.**

(a) A new birth certificate shall be filed when:

(1) Proof is submitted to the Department that the previously unmarried parents of a child have intermarried subsequent to the birth of such person; or,

\* \* \*

[(5) The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has undergone convertive surgery.]

Notes: Paragraph (5) of subdivision (a) of Section 207.05 was repealed on \_\_\_\_\_ because this paragraph, stated a person had to submit proof to the Department that such person had undergone convertive surgery, no longer applies. Persons who have changed their gender may apply for a new birth certificate pursuant to Section 207.05(b).

**RESOLVED**, that Section 207.05 of the New York City Health Code as last amended by resolution, on the sixteenth day of December nineteen hundred and seventy-one, be and the same hereby is amended, to add a new subdivision (b) and to re-letter the subsequent subdivisions accordingly, to be printed together with explanatory notes, to read as follows:

**§ 207.05 Correction of records; filing of new birth certificates.**

\* \* \*

(b) Upon application, a new birth certificate shall be filed when:

(1) The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has completed the transition from one gender to the other and intends to permanently remain in such acquired gender. The acquired gender shall be entered on the new certificate. No application shall be approved unless the applicant is over 18 years of age and has lived in the acquired gender for at least two years ending with the date on which the application is made. Applications shall include two affidavits, demonstrating the applicant's full transition to and intended permanence in his or her acquired gender, as follows:

i A notarized affidavit from a physician licensed in the United States, practicing in the field of gender identity disorder or qualified through board certification in one of the following specialties: endocrinology, adolescent medicine, urology, plastic

surgery, gynecology, family medicine, general medicine or internal medicine, attesting to the transition of the applicant's gender. The notarized affidavit shall state:

- A The physician's credentials, including:
  - a. Information about licensure and specialties, including license number, name of issuing body, and name of school from which highest degree was awarded; and
  - b. Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the physician and information about the number of transgender patients the physician has treated;
- B The length of time and approximate dates the applicant has lived in the acquired gender;
- C The length of time the physician has been treating the applicant;
- D A detailed diagnosis and case history of the applicant, including results from physical examinations and a description of all medical treatments received by the applicant for the purpose of modifying sexual characteristics;
- E The affiant's professional opinion regarding the applicant's full transition to and intended permanence in his or her acquired gender; and
- F If the affiant had not previously treated the applicant, the affiant shall:
  - a. Conduct a detailed physical examination of the applicant;
  - b. Review of the applicant's case history and records concerning the applicant's medical history related to gender transition; and
  - c. Include affiant's findings in the affidavit.

(ii) A notarized affidavit from a mental health professional licensed in the United States, practicing in the field of gender identity disorders. Minimum acceptable credentials include: master's degree or its equivalent in a clinical behavioral science and specialized training and competence in gender identity disorders. The notarized affidavit shall state:

- A The mental health professional's credentials, including:
  - a. Information about licensure and specialties, including license number, name of issuing body, and name of school from which highest degree was awarded; and
  - b. Information demonstrating at least two years experience in the last five years related to transgender treatment, including listing relevant specialized courses taken by the mental health professional and information about the number of transgender patients treated;
- B The length of time and approximate dates the applicant has lived in the acquired gender;
- C The length of time the mental health professional has been treating the applicant;
- D A detailed diagnosis and case history of the applicant including the applicant's psychological treatments related to his or her gender transition;
- E The affiant's professional opinion regarding the applicant's psycho-social adjustment and support network, and full transition to and intended permanence in his or her acquired gender;
- F If the affiant had not previously treated the applicant, the affiant shall:
  - a. Physically meet and interview the applicant;

- b. Review the applicant's case history and records concerning applicant's psychological history related to gender transition; and
- c. Include affiant's findings in the affidavit.

(2) A person who previously obtained a birth certificate based on convertive surgery may submit a request to the Department for the issuance of a new birth certificate indicating the person's gender. In such case, the individual shall not be required to submit the affidavits set forth in subparagraphs (i) and (ii) of §207.05(b)(1).

(c) When an application for a new birth certificate is filed pursuant to §207.05(b)(1), the Department may request the applicant to provide other information or evidence demonstrating the applicant's transition to his or her acquired gender.

[(b)] (d) When a new birth certificate is filed pursuant to subdivision (a) or (b) of this section, the original birth certificate, the application for a new birth certificate and supporting documents shall be placed under seal, and such seal shall not be broken except by order of a court of competent jurisdiction. Thereafter, when a certified copy is requested of the certificate of birth of the person for whom a new certificate has been filed pursuant to the provisions of this section, a copy of the new certificate of birth shall be issued, except when an order of a court of competent jurisdiction requires the issuance of a copy of the original certificate of birth.

[(c)] (e) A new birth certificate may be filed when an application for amendment is submitted within three months after the report of birth, or when the Commissioner or other personnel of the Department designated by him finds it desirable by reason of the nature and extent of the amendments. In such a case, the original certificate shall be filed with the application for amendment.

Notes: The former provision, §207.05(a)(5), enacted by the Board of Health in nineteen hundred and seventy-one, requiring a person to have had convertive surgery prior to filing for a new birth certificate did not recognize the highly individualized health care now available to a person to complete the transition from his or her gender at birth to the acquired gender. Also, the Board of Health excluded gender from the birth certificate form it approved for use by individuals who had undergone convertive surgery and were applying for a new birth certificate. Section 207.05 was amended on [REDACTED] to authorize persons who have completed the transition to and intend to permanently remain in their acquired gender, including those who may not have undergone convertive surgery, to apply for a new birth certificate indicating the acquired gender.