

# PLANNED PARENTHOOD OF NEW YORK CITY



April 30, 2009

Rena Bryant  
Secretary to the Board of Health  
125 Worth St. CN-31  
New York, NY 10013

*By electronic and first class mail*

**Re: Proposed Amendments to Article 203  
of the New York City Health Code**

Dear Ms. Bryant,

We appreciate the opportunity to comment on the proposed amendments to Article §203 on behalf of Planned Parenthood of New York City (PPNYC) and the New York Civil Liberties Union (NYCLU) Reproductive Rights Project. PPNYC provides confidential reproductive health services to the women, men and teens of New York City regardless of their ability to pay. In 2008, at our three centers (located in the Bronx, Brooklyn and Manhattan) and on our mobile medical units we provided reproductive health care and family planning services to nearly 45,000 New Yorkers, which translates into approximately 72,000 visits. The NYCLU is the New York Affiliate of the American Civil Liberties Union; our mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers. The NYCLU Reproductive Rights Project is the only New York State based legal organization that focuses on reproductive rights.

While we take no position on the reporting requirements contained in Article 203 of the City Health Code themselves, the NYCLU and PPNYC support the amendments proposed to this Article. In particular, we endorse the provisions (section 203.03 and the corresponding definition in section 203.01) properly clarifying that health care practitioners other than physicians may prepare and file the reports required under Article 203. This will remove confusion created by the existing language, which appears to require that only a *physician* in attendance at or after a termination may prepare and file the required reports. The proposed amendments will streamline the reporting process for health care facilities and improve efficiency of record-keeping and documentation by making clear that health care practitioners may delegate the preparation of the necessary certificates and medical reports to properly trained agents. The provision maintains high medical standards by specifying that the health care practitioner in attendance (or in the case of spontaneous abortion, only the attending physician) must certify the correctness of the report.

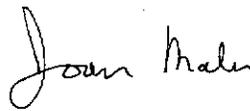
In addition, the proposed amendments eliminate confusion created by the existing language as to whether its intent is to place a substantive prohibition on which types of medical professionals are authorized to perform or attend pregnancy terminations in the first instance. Such determinations regarding the provision of health care are the proper subject of state law, rather than local ordinance.<sup>1</sup> Over the years, State laws have provided increased recognition of the role of health care practitioners other than physicians, such as physician assistants, nurse practitioners, and midwives, in the direct provision of medical care. These laws authorize the provision of medical services by such practitioners, so long as they act within their training and experience, and receive the requisite level of direction from, supervision of, and/or collaboration with a physician.<sup>2</sup> State Education law defines the parameters of the broad scope of practice of these different medical professions.<sup>3</sup> Whether a specific procedure or service falls within the scope of practice of a particular profession is established by the relevant regulations authorizing the provision of medical care by that type of professional, and by the appropriate professional board within the Department of Education that govern their licensing and discipline (i.e. the Boards of Nursing, Medicine, and Midwifery).<sup>4</sup> The proposed amendments make clear that the purpose of Article 203 is to set forth required mechanisms for reporting pregnancy terminations, rather than to opine as to what types of health care professionals may attend, assist, or be present during and after terminations of pregnancy.

Finally, the proposed amendments maintain the confidentiality of resulting reports, safeguarding them from compelled disclosure. They therefore have our support.

Sincerely,



Galen Sherwin  
Director  
NYCLU Reproductive Rights Project



Joan Malin  
President and CEO  
Planned Parenthood of New York City

<sup>1</sup> See *Robin v. Vill. of Hempstead*, 30 N.Y.2d 347, 350 (1972) (holding that a locality cannot require abortions to be performed only in hospitals where State laws or regulations have no such restrictions).

<sup>2</sup> For example, a physician assistant ("PA") may perform medical services, including prescribing drugs, under the supervision of a physician provided the services are within both the scope of practice of the supervising physician and the PA's training and experience. N.Y. Educ. Law §§ 6542(1); 10 N.Y.C.R.R. 94.2(a). Nurse practitioners may diagnose and treat illness and physical conditions, including through prescribing drugs, "within a specialty area of practice, in collaboration with a licensed physician qualified to collaborate in the specialty involved, provided such services are performed in accordance with a written practice agreement and written practice protocols." N.Y. Educ. Law § 6902(13)(2); 8 N.Y.C.R.R. § 64.5. Licensed midwives may provide services, including limited prescription authority, in the area of normal pregnancy, child birth and postpartum care, and primary preventive reproductive health care, pursuant to a written collaborative practice agreement with a licensed physician who practices obstetrics or a hospital that provides obstetric services. N.Y. Educ. Law § 6951; 8 N.Y.C.R.R. § 79-5.7.

<sup>3</sup> See N.Y. Education Law §§ 6509, 6530 (including in definition of professional misconduct "Practicing or offering to practice beyond the scope permitted by law"); 8 NYCRR § 29.1(9) (same).

<sup>4</sup> See N.Y. Pub. Health Law § 230 (establishing professional boards for doctors and PAs); N.Y. Educ. Law § 6504 (establishing professional boards for other professions).