

DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
BOARD OF HEALTH

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NOTICE OF INTENTION  
TO AMEND ARTICLE 203 OF THE NEW YORK CITY HEALTH CODE

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**NOTICE OF PUBLIC HEARING**

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 the Charter, notice is hereby given of the proposed amendment of Article 203 of the New York City Health Code (the “Health Code”).

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON APRIL 30, 2009, FROM 10AM TO 12PM, IN THE THIRD FLOOR BOARDROOM (ROOM 330) 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 APRIL 29, 2009. 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 APRIL 16, 2009.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 10AM ON THE DATE OF THE HEARING. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, OR BY E-MAIL TO [RESOLUTIONCOMMENTS@HEALTH.NYC.GOV](mailto:RESOLUTIONCOMMENTS@HEALTH.NYC.GOV) ON OR BEFORE 5PM ON APRIL 30, 2009. THE DEPARTMENT’S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

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 (“Health Code”) are promulgated pursuant to sections 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 (“Department” or “DOHMH”) with jurisdiction to regulate all matters affecting health in the City of New York. Section 558(b) and (c) of the Charter empowers the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

## **STATEMENT OF BASIS AND PURPOSE**

### **INTRODUCTION**

As part of a comprehensive review of the Health Code to assess the efficacy of the Code in protecting public health, the Department proposes that current Article 203, Termination of Pregnancy, be amended, effective January 1, 2010, to assure that the Code provides adequate legal tools to effectively address general public health matters. As part of the revision effort, obsolete provisions have been omitted and the standards and references set forth in revised Article 203 have been modernized to reflect current Department and public health practice.

Pursuant to this review and assessment of the Health Code, the DOHMH proposes that the Board amend Article 203 as provided for below.

### Section 203.01

Subdivision (a) was amended to remove the clause “as formerly defined,” as there was no such previous reference.

Subdivision (c) was amended to reflect the definition recommended by the National Center for Health Statistics of the federal Centers for Disease Control and Prevention.

A new definition of “licensed health care practitioner” was added as subdivision (e). Which health care practitioners may perform which health care services is a function of state law, most importantly the New York State Education Law. The new definition simply refers to whichever health care practitioners are authorized to perform terminations of pregnancy pursuant to the state Education Law or other applicable law. In turn, those health care practitioners are among those who are obligated or authorized to file or prepare reports, as specified in sections 203.03 and 203.05. The simplicity of this definition facilitates reporting, including electronic reporting, and avoids the need to delineate which health care practitioners are obligated or authorized to file termination of pregnancy reports or to prepare documents associated therewith.

### Section 203.03

Subdivision (a) was amended to update terminology from physician or nurse-midwife to other licensed health care practitioners, in order to reflect the current practice of having medical practitioners other than physicians in attendance at terminations of pregnancy. Permitting a licensed health care practitioner who was in attendance, other than a physician, to report a termination of pregnancy facilitates reporting and does not affect medical care standards.

Subdivision (b) was modified to accommodate legal nomenclature and to reflect the change to paragraph (4) of subdivision (a) clarifying that when the office of chief medical examiner files a certificate of spontaneous termination of pregnancy, any medical examiner within that office may file the certificate without a confidential medical report.

Subdivision (c) was amended to change the 24 hour filing requirement for spontaneous terminations and 5 day filing requirement for induced terminations of pregnancy to a 24 hour reporting requirement for *all* terminations of pregnancy when a permit to dispose of the conceptus is required or requested. Certificates and confidential medical reports, if any, related to terminations not resulting in the issuance of a disposition permit must be filed within 5 business days after the event. As per amendments to section 203.09 (see below), such permit is required for all terminations occurring at 20 weeks gestation or later and may be requested for terminations occurring at less than 20 weeks. It should be noted that section 4162 of the New York State Public Health Law also requires the issuance of a disposition permit for a conceptus of 20 weeks gestation or later. Subdivision (c) was also amended to remove the provision pertaining to filing within 15 days for the termination of pregnancy revealed by pathological examination. This provision is no longer applicable as pathological examination is no longer required for determining pregnancy status.

Subdivision (d) was amended to make proper reference to New York City, and to accommodate the fact that in some cases, but not necessarily all, a conceptus may be buried or otherwise disposed of pursuant to a permit issued by the Department. In such circumstances, the required documents may be filed by a funeral director, undertaker or person in charge of the City mortuary, as the case may be, or a registered agent or designee of such persons. Such an alternative means of filing is only available, however, when the report is being filed in paper form. Reference to electronic filing was deleted and incorporated into the new subdivision (e).

Subdivision (e) was added to require all facilities reporting births electronically or reporting 100 or more induced terminations of pregnancy in any 1 year, and the office of chief medical examiner, to report terminations of pregnancy electronically. When a required reporter files electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when filing an application for a disposition permit, must also file such application electronically. Facilities not required to report electronically may opt to do so with approval by the

Department or may continue to report on paper. However, once a facility begins to report electronically, it may not revert to paper filing unless so authorized by the Department.

Subdivision (f) was added to require departmental approval of electronic reporting systems, in order to ensure the uniformity and quality of data collection. The subdivision also requires approval from the DOHMH prior to the electronic transfer of data from a facility to the Department to ensure the protection of the confidentiality of the information provided. The subdivision also provides for alternative arrangements, upon the Department's approval or initiative, in particular circumstances.

Subdivision (g) was added to provide for situations in which a reporter receives required information after reporting the termination of the pregnancy. The reporter must submit such information within 5 business days of receipt.

Subdivision (h) was added to require reporters to provide, within 5 business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported. Such information may include, for example, updated causes of death.

#### Section 203.05

The title of section 203.05 was amended to "Preparation and Certification of Certificates" and the paragraph titles "*Preparation*" and "*Certification*" were added to subdivision (a). These changes were made to indicate that separate rules apply to the preparation and certification of certificates.

Paragraph (1) of subdivision (a) was amended to include licensed health care practitioners, as defined in § 203.01, and to reflect gender neutrality. Licensed health care practitioners, besides only physicians, may attend, assist or be present at terminations of pregnancy. Permitting a licensed health care practitioner in attendance, assisting or present at or after the event, other than a physician, to prepare reports facilitates the expeditious preparation of certificates and does not affect medical care standards. Accordingly, when a termination of pregnancy occurs in a hospital, reports may be prepared by a licensed health care practitioner who was in attendance, assisting or present at or after the event; the chief medical officer of the hospital; or the physician in charge of the treating hospital service. When a termination of pregnancy occurs elsewhere than in a hospital and is attended by a licensed health care practitioner, the practitioner may prepare the report.

This paragraph was also amended to permit the designee of a person in charge of a hospital, or the designee of the attending licensed health care practitioner elsewhere than in a hospital, to prepare the required certificate and confidential medical report, if any. Such a designee must be trained or approved by the Department. This is particularly useful for electronic reporting and will enable the hospital, or, for example, a doctor attending a termination of pregnancy in his or her office, to delegate the task of

preparing the certificate to a lower level employee. The training and approval requirement should improve data quality.

Paragraph (2) of subdivision (a) is substantially new and was amended to clarify that, regardless of which kind of licensed health care practitioner or other individual is authorized to file a report or to prepare a certificate, only a physician may certify a certificate of spontaneous termination of pregnancy or the associated confidential medical report. For induced termination of pregnancy certificates, a licensed health care practitioner, as well as the several physicians specified, may certify such reports. A certifying physician, or a medical examiner who is also a physician, is required to examine the documents being certified and make necessary changes. Accordingly, the requirement for a physician's countersignature has been deleted.

Subdivision (b) was amended to provide that if worksheets are used by anyone authorized to prepare certificates of termination of pregnancy and confidential medical reports, if any, the worksheets must be approved by the DOHMH in order to control the quality of data collection. In addition, the requirement to have the Board of Health approve the electronic form of certificates has been deleted, because electronic forms are merely reflective of the paper forms prescribed by the Board pursuant to this subdivision, aside from incidental formatting differences.

#### Section 203.07

Subdivision (a) was amended to provide that the disclosure of the confidential medical report of a spontaneous termination of pregnancy shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of "scientific purposes."

Subdivision (c) was amended to provide that the certificate of induced termination of pregnancy is confidential and that disclosure shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

#### Section 203.09

This section was amended to change the gestational age from 24 weeks to 20 weeks in conformity with New York state practice and hospital regulations concerning the requirement to issue a disposition permit for the disposal of such a conceptus. The section has also been amended to clarify that a disposition permit may be issued, upon request, for the disposal of a conceptus of less than 20 weeks gestation.

The Proposal is as follows:

Note – Matter in brackets [ ] is to be deleted.  
Matter underlined is new.

**RESOLVED**, that, effective January 1, 2010, Article 203 of the New York City Health Code be and the same hereby is revised, to be printed together with explanatory notes to read as follows:

Article 203  
Termination of Pregnancy  
Introductory Notes

This Article was amended by resolution of the Board on [ ] to mandate electronic reporting of spontaneous terminations of pregnancy for hospitals or other facilities, such as doctors' offices, reporting births electronically and for hospitals or other facilities reporting 100 or more induced terminations per year; update the definition of induced termination to match that of the Centers for Disease Control and Prevention; broaden the class of individuals who are obligated to report, or who are authorized to prepare reports to licensed health care practitioners, defined as a physician or other person licensed or authorized pursuant to the New York State Education Law or other applicable law, to perform terminations of pregnancy; require departmental approval or training for any non-licensed health care practitioner designated to prepare reports; clarify that only physicians may sign or certify reports of spontaneous terminations and that licensed health care practitioners may also sign or certify reports of induced terminations; and tighten disposition permit requirements for the disposal of a conceptus that has completed 20 or more weeks of gestation from 24 weeks or more.

On September 15, 1977, the Board of Health passed a resolution to repeal then-Articles 203 and 204 and to reenact them as a new Article 203 to pertain to all events governed by the former articles and to define them as terminations of pregnancy. Terminations of pregnancy were classified as either spontaneous or induced terminations.

Two U.S. Supreme Court cases have upheld vital statistics or public health reporting requirements for terminations of pregnancy. In *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976), the Court unanimously upheld a Missouri law that required health facilities and physicians to report all abortions to the health department. The Court concluded that the keeping of such statistics and records is useful to the state's interest in protecting the health of its female citizens, and that record-keeping and reporting requirements "that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible." *Id.* at 80, 96 S.Ct. at 2846.

Subsequently, the Supreme Court reiterated its holding in *Danforth* when it considered the reporting requirements of the Pennsylvania Abortion Control Act in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S.Ct.

2791, 120 L.Ed.2d 674 (1992). The Court held, “The collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult.” *Id.* at 900-01, 112 S.Ct. at 2832.

§ 203.01 **Definitions.**

When used in this title:

- (a) “Termination of pregnancy” means the expulsion or extraction of a conceptus, regardless of the duration of pregnancy, other than a live birth as defined in § 201.01(a), and includes fetal death [as formerly defined].
- (b) “Spontaneous termination of pregnancy” means the unplanned termination of a pregnancy, including but not limited to an ectopic pregnancy, or such a termination associated with a cesarean section, or an operative procedure unrelated to pregnancy resulting in an inadvertent termination.
- (c) “Induced termination of pregnancy” means the [planned termination of a pregnancy by operative, instrumental or other intervention] purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and which does not result in a live birth. This definition excludes management or prolonged retention of products of conception following a spontaneous termination of pregnancy.
- (d) “Conceptus” means the product of any termination of pregnancy, regardless of its duration, including a hydatidiform mole, fetal tissue or other evidence of pregnancy recovered by operative or other procedure, but not including a live birth as defined in § 201.01(a).
- (e) “Licensed health care practitioner” means a physician or other person licensed or authorized pursuant to the New York State Education Law, or other applicable law, to perform terminations of pregnancy.

Notes:

This section was amended by resolution adopted on [     ].

Subdivision (a) was amended to remove the clause “as formerly defined,” as there was no such previous reference.

Subdivision (c) was amended to reflect the definition recommended by the National Center for Health Statistics of the federal Centers for Disease Control and Prevention.

A new definition of “licensed health care practitioner” was added as subdivision (e). Which health care practitioners may perform which health care services is a function of state law, most importantly the New York State Education Law. The new definition simply refers to whichever health care practitioners are authorized to perform terminations of pregnancy pursuant to the state Education Law, or other applicable law. In turn, those health care practitioners are among those who are obligated or authorized to file or prepare reports, as specified in sections 203.03 and 203.05. The simplicity of this definition facilitates reporting, including electronic reporting, and avoids the need to delineate which health care practitioners are obligated or authorized to file termination of pregnancy reports or to prepare documents associated therewith.

**§ 203.03 Reporting terminations of pregnancy.**

(a) When a termination of pregnancy occurs in the City it shall be reported as follows:

(1) If the event occurs in a hospital or [on its ambulance service] en route thereto, by the person in charge [thereof] of such hospital or his or her designee; or[.]

(2) If the event occurs elsewhere than in a hospital or en route thereto, by the licensed [physician] health care practitioner in attendance at or after such event; or

(3) If a [nurse-midwife] licensed health care practitioner attends at or after the event elsewhere than in a hospital or en route thereto as an associate of a hospital, by the person in charge of the [maternity clinic or] hospital with which [she] the licensed health care practitioner is associated or by the designee of such person in charge; or

(4) If the event is investigated by the office of [the] chief medical examiner, by [the chief] a medical examiner within that office.

(b) The person required to report a termination of pregnancy pursuant to [subsection] subdivision (a)[(1), (2) or (3)] of this section shall file:

(1) A certificate of induced termination of pregnancy for an induced termination of pregnancy; or

(2) A certificate of spontaneous termination of pregnancy, including a confidential medical report, for a spontaneous termination of pregnancy[. The chief]; provided that a medical examiner, when required to report pursuant to [subsection] paragraph (a)(4) of this section, shall file a certificate of spontaneous termination of pregnancy only.

(c) A certificate of [spontaneous] termination of pregnancy required by this section shall be filed within 24 hours after the event if a permit to dispose of the conceptus pursuant to Article 205 of this Code is required or requested, and in all other cases a certificate of [induced] termination of pregnancy shall be filed within five business days after the event with any office maintained and designated by the Department for such purposes[, but if

the termination of pregnancy is revealed by pathological examination of tissues, the required certificate shall be filed within 15 days after recovery of the tissue].

(d) [T]In circumstances where the issuance of a disposition permit pursuant to Article 205 of this Code is required or requested and a person required to report a termination of pregnancy pursuant to subdivision (a) of this section does not file a report thereof electronically, the requirement of filing[ the] a certificate and confidential medical report, if any, required by this section may be fulfilled by delivery of the same immediately upon demand and within the time prescribed by [subsection] subdivision (c) of this section to a funeral director or undertaker authorized to take charge of the conceptus or to the person in charge of the [c]City mortuary if the remains are to be buried in the [c]City cemetery. Such funeral director, undertaker or person in charge of the [c]City mortuary, or an agent of such funeral director or undertaker registered with the Department pursuant to Article 205 of this Code or a designee of the person in charge of the mortuary, shall then file the certificate within 48 hours following the receipt of the certificate of termination of pregnancy. Funeral directors, undertakers, [and c]City mortuary personnel, and their agents or designees, shall not divulge information in the confidential documents except to authorized personnel of the Department. [Certificates required to be filed by this section may be filed with the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department.]

(e) All spontaneous terminations of pregnancy occurring at or en route to hospitals or other facilities that report births electronically to the Department pursuant to Article 201 of this Code, all induced terminations of pregnancy occurring at hospitals or other facilities reporting 100 or more induced terminations of pregnancy per year, and all terminations of pregnancy reported by the office of chief medical examiner, shall be reported to the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. In circumstances where the issuance of a disposition permit pursuant to Article 205 of this Code is required or requested, and a person required to report a termination of pregnancy pursuant to subdivision (a) of this section files a report thereof electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City

mortuary when said mortuary files an application for a disposition permit, shall also file, within 72 hours following the termination of pregnancy, the application for such a permit electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. All hospitals or other facilities that are not required to report terminations of pregnancy electronically pursuant to this subdivision may, at their election and upon approval by the Department, implement an electronic reporting system, or continue to report terminations of pregnancy on approved paper forms. However, once a hospital or facility has commenced reporting electronically, such hospital or facility may not report on paper forms unless otherwise authorized by the Department.

(f) All facilities required or electing to report electronically pursuant to subdivision (e) of this section shall apply to the Department prior to implementing any electronic reporting system and, upon approval by the Department, shall make electronic reports only in such manner and on computer programs prescribed and provided by or otherwise authorized by the Department. Written paper reports may be submitted for a limited period of time only in the case of extenuating circumstances, temporary equipment failure, or prolonged inability to access the electronic reporting system, and only with the specific approval of the Department. In addition, the Department may, on its own initiative, allow written, paper reports to be submitted if electronic reporting is not possible in a particular circumstance, as a result of a deficiency in the Department's electronic reporting system. The Department may, in addition, require summary, cumulative or periodic reports on such reporting schedule as it may deem necessary.

(g) The person required to report a termination of pregnancy or to file an application for a disposition permit shall provide to the Department information that was required to be reported, but that was not so reported, within five business days of that person receiving the information.

(h) Upon a request by the Department for additional information that may be necessary to complete, clarify or verify the information required to be reported, the person required to report a termination of pregnancy or to file an application for a disposition permit shall provide such information to the Department within five business days of the request.

## Notes:

This section was amended by resolution adopted on [    ].

Subdivision (a) was amended to update terminology from physician or nurse-midwife to other licensed health care practitioners, in order to reflect the current practice of having medical practitioners other than physicians in attendance at terminations of pregnancy. Permitting a licensed health care practitioner who was in attendance, other than a physician, to report a termination of pregnancy facilitates reporting and does not affect medical care standards.

Subdivision (b) was modified to accommodate legal nomenclature and to reflect the change to paragraph (4) of subdivision (a) clarifying that when the office of chief medical examiner files a certificate of spontaneous termination of pregnancy, any medical examiner within that office may file the certificate without a confidential medical report.

Subdivision (c) was amended to change the 24 hour filing requirement for spontaneous terminations and 5 day filing requirement for induced terminations of pregnancy to a 24 hour reporting requirement for *all* terminations of pregnancy when a permit to dispose of the conceptus is required or requested. Certificates and confidential medical reports, if any, related to terminations not resulting in the issuance of a disposition permit must be filed within 5 business days after the event. As per amendments to section 203.09 (see below), such permit is required for all terminations occurring at 20 weeks gestation or later and may be requested for terminations occurring at less than 20 weeks. It should be noted that section 4162 of the New York State Public Health Law also requires the issuance of a disposition permit for a conceptus of 20 weeks gestation or later. Subdivision (c) was also amended to remove the provision pertaining to filing within 15 days for the termination of pregnancy revealed by pathological examination. This provision is no longer applicable as pathological examination is no longer required for determining pregnancy status.

Subdivision (d) was amended to make proper reference to New York City, and to accommodate the fact that in some cases, but not necessarily all, a conceptus may be buried or otherwise disposed of pursuant to a permit issued by the Department. In such circumstances, the required documents may be filed by a funeral director, undertaker or person in charge of the City mortuary, as the case may be, or a registered agent or designee of such persons. Such an alternative means of filing is only available, however, when the report is being filed in paper form. Reference to electronic filing was deleted and incorporated into the new subdivision (e).

Subdivision (e) was added to require all facilities reporting births electronically or reporting 100 or more induced terminations of pregnancy in any 1 year, and the office of chief medical examiner, to report terminations of pregnancy electronically. When a required reporter files electronically, a funeral director or undertaker authorized to take charge of the remains, or the person in charge of the City mortuary when filing an application for a disposition permit, must also file such application electronically. Facilities not required to report electronically may opt to do so with approval by the Department or may continue to report on paper. However, once a facility begins to file electronically, it may not revert to paper filing unless so authorized by the Department.

Subdivision (f) was added to require departmental approval of electronic reporting systems, in order to ensure the uniformity and quality of data collection. The subdivision also requires approval from the DOHMH prior to the electronic transfer of data from a facility to the Department to ensure the protection of the confidentiality of the information provided. The subdivision also provides for alternative arrangements, upon the Department's approval or initiative, in particular circumstances.

Subdivision (g) was added to provide for situations in which a reporter receives required information after reporting the termination of the pregnancy. The reporter must submit such information within 5 business days of receipt.

Subdivision (h) was added to require reporters to provide, within 5 business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported. Such information may include, for example, updated causes of death.

§ 203.05 **Preparation and certification of certificates.**

(a)(1) *Preparation.* Any certificate or confidential medical report required by this [section] Article shall be prepared by the same person required to file the same pursuant to § 203.03 but when a termination of pregnancy occurs in a hospital or [on its ambulance service] en route thereto, the certificate and confidential medical report, if any, shall be prepared by [the physician] a licensed health care practitioner in attendance, [or] assisting or present at or after the event, by the chief medical officer of the hospital, [or] by the physician in charge of the service on which the woman was treated, or by a designee of the person in charge of the hospital who is trained or approved by the Department. When a [nurse-midwife] licensed health care practitioner attends at or after a termination of pregnancy elsewhere than in a hospital or en route thereto, he or she, or a designee of such person who is trained or approved by the Department, shall prepare the required certificate [, and a physician shall countersign the certificate and examine it for correctness of the medical information entered thereon and make necessary changes] and confidential medical report, if any.

(2) *Certification.* A certificate of spontaneous termination of pregnancy and the confidential medical report shall be certified by a physician in attendance or assisting at or after the event, by the chief medical officer of the hospital where the event occurred, or by the physician in charge of the service on which the woman was treated. A certificate of induced termination of pregnancy shall be certified by a licensed health care practitioner, who is licensed or authorized pursuant to the State Education Law or other applicable law to perform such a termination of pregnancy, in attendance or assisting at or after the event, by the chief medical officer of the hospital where the event occurred, or by the physician in charge of the service on which the woman was treated. When a termination of pregnancy certificate is filed by the office of chief medical examiner, the certificate shall be certified by a medical examiner within that office. A person certifying a certificate and confidential medical report, if any, shall examine said documents for correctness of the information contained thereon and make necessary changes.

(b) The certificates specified in § 203.03(b), except for certificates filed electronically pursuant to § 203.03(e), shall be prepared on forms prescribed by the Board and furnished by the Department. [Certificates that are electronically filed by means of c] Computer programs specified and provided or otherwise authorized for use by the Department [must be filed in an electronic form prescribed by the Board and furnished by the Department] for electronic filing shall be reflective of the forms prescribed by the Board except to the extent that differences may be necessary or warranted in order to accommodate electronic formatting. The person preparing the certificate shall enter all information required by the appropriate form. When a termination of pregnancy occurs in a hospital or [on its ambulance service] en route thereto, the information shall be taken from the hospital record of the case. If worksheets are used to prepare certificates of termination of pregnancy and confidential medical reports, if any, the worksheets shall be ones provided by the Department or in a form approved by the Department. If individuals other than a physician, licensed midwife, registered professional nurse, certified nurse practitioner or registered physician assistant use such worksheets, then such individuals shall be trained or approved by the Department. The person preparing the certificate and confidential medical report, if any, or such person’s employer, shall retain such worksheets for a period of three years from the date of the event, and shall, upon request, make such worksheets available to the Department for inspection.

Notes:

This section was amended by resolution adopted on [ ].

The title of section 203.05 was amended to “Preparation and Certification of Certificates” and the paragraph titles “*Preparation*” and “*Certification*” were added to subdivision (a). These changes were made to indicate that separate rules apply to the preparation and certification of certificates.

Paragraph (1) of subdivision (a) was amended to include licensed health care practitioners, as defined in § 203.01, and to reflect gender neutrality. Licensed health care practitioners, besides only physicians, may attend, assist or be present at terminations of pregnancy. Permitting a licensed health care practitioner in attendance, assisting or present at or after the event, other than a physician, to prepare reports facilitates the expeditious preparation of certificates and does not affect medical care standards. Accordingly, when a termination of pregnancy occurs in a hospital, reports may be prepared by a licensed health care practitioner who was in attendance, assisting or present at or after the event; the chief medical officer of the hospital; or the physician in charge of the treating hospital service. When a termination of pregnancy occurs elsewhere than in a hospital and is attended by a licensed health care practitioner, the practitioner may prepare the report.

This paragraph was also amended to permit the designee of a person in charge of a hospital, or the designee of the attending licensed health care practitioner elsewhere than in a hospital, to prepare the required certificate and confidential medical report, if any. Such a designee must be trained or approved by the Department. This is particularly useful for electronic reporting and will enable the hospital, or, for example, a doctor attending a termination of pregnancy in his or her office, to delegate the task of preparing the certificate to a lower level employee. The training and approval requirement should improve data quality.

Paragraph (2) of subdivision (a) is substantially new and was amended to clarify that, regardless of which kind of licensed health care practitioner or other individual is authorized to file a report or to prepare a certificate, only a physician may certify a certificate of spontaneous termination of pregnancy or the associated confidential medical report. For induced termination of pregnancy certificates, a licensed health care practitioner, as well as the several physicians specified, may certify such reports. A certifying physician, or a medical examiner who is also a physician, is required to examine the documents being certified and make necessary changes. Accordingly, the requirement for a physician's countersignature has been deleted.

Subdivision (b) was amended to provide that if worksheets are used by anyone authorized to prepare certificates of termination of pregnancy and confidential medical reports, if any, the worksheets must be approved by the DOHMH. This will enable the Department to control the quality of data collection. In addition, the requirement to have the Board of Health approve the electronic form of certificates was deleted, because electronic forms are merely reflective of the paper forms prescribed by the Board pursuant to this subdivision, aside from incidental formatting differences.

**§ 203.07 Confidential medical report of spontaneous termination of pregnancy and certificate of induced termination of pregnancy; not subject to [subpoena] compelled disclosure or inspection.**

(a) The confidential medical report of a spontaneous termination of pregnancy shall [not] be confidential and not subject to [subpoena] compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a federal, State, county or municipal agency charged by law with the duty of detecting or prosecuting crime. The Commissioner may, however, approve the inspection of such medical reports for scientific purposes.

(b) Within the context of this section, scientific purposes shall mean epidemiologic surveillance and investigation by a governmental public health agency, research, [and/]or the compilation of statistics relating factors bearing on disease incidence, prevalence, mortality or treatment.

(c) The certificate of induced termination of pregnancy shall [not] be confidential and not subject to [subpoena] compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department.

Notes:

This section was amended by resolution adopted on [ ].

Subdivision (a) was amended to provide that the disclosure of the confidential medical report of spontaneous termination of pregnancy shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of “scientific purposes.”

Subdivision (c) was amended to provide that the certificate of induced termination of pregnancy is confidential and that disclosure shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

### § 203.09 **Disposal of conceptus.**

Every conceptus that has completed 20 or more weeks of gestation shall be disposed of in a manner provided for human remains generally and in accordance with a disposition permit issued pursuant to Article 205 of this [c]Code. When, however, [the certificate of termination of pregnancy has been filed pursuant to §203.03(b),] a conceptus [which] has not completed [24] 20 weeks of gestation, it may be [used for anatomical purposes within the meaning of §205.01(e) and thereafter disposed of by the physician in attendance without further authorization or permit] disposed of in accordance with a disposition permit issued pursuant to Article 205 of this Code, upon request.

Notes:

This section was amended by resolution adopted on [ ].

This section was amended to change the gestational age from 24 weeks to 20 weeks in conformity with New York state practice and hospital regulations concerning the requirement to issue a disposition permit for the disposal of such a conceptus. The section was also amended to clarify that a disposition permit may be issued, upon request, for the disposal of a conceptus of less than 20 weeks gestation.