

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**NOTICE OF ADOPTION
OF AMENDMENTS TO ARTICLE 205 OF THE
NEW YORK CITY HEALTH CODE**

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 of intention to amend Article 205 (Death and Disposal of Human Remains) of the New York City Health Code (the “Health Code”) was published in the City Record on September 21, 2011. A comment period was held through October 25, 2011. No written comments were received. No changes have been made to the resolution since it was published for public comment. At a meeting on December 13, 2011 the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the “Health Code”) are 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 the 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.

Basis and purpose of the rule change

The Department of Health and Mental Hygiene is requesting that the Board of Health amend Article 205 (Deaths and Disposals of Human Remains), correcting an inadvertent error made in section 205.19(a)(1) and (2) when Article 205 was presented to the Board of Health for adoption at its September 2009 meeting.

Section 205.19 addresses the removal of human remains from place of death or termination of pregnancy. In its **Notice of Intention** the relevant excerpt of Section 205.19(a)(1) read as follows: “Prior authorization of the Department shall not be required to remove human remains to a county in **the** State contiguous to the City...When a death or termination of pregnancy occurs under circumstances which do not require notification to the Office of Chief Medical Examiner, the remains may be removed from the place of death, termination of pregnancy or autopsy to another place within the City or to a county within **the** State contiguous to the City...” (emphasis added). Similarly, Section 205.19(a)(2) read as follows: “Notwithstanding the

requirements of paragraph (1) of this subdivision, in the case of a death from natural causes occurring elsewhere than in a hospital or hospice, such remains may be removed only to a funeral establishment within the City or within a county of **the** State contiguous to the City...”(emphasis added).In the **Notice of Adoption** presented to the Board of Health the word “**the**” was inadvertently replaced with “**a**”, in both paragraphs and therefore changed the intent of the Department.

Accordingly, the Department requests the Board to amend Article 205, section 205.19, subdivisions (a)(1) and (2).

The resolution is as follows:

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

RESOLVED, that paragraphs (a)(1) and (2) of §205.19 of Article 205 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on September 22, 2009, be and the same hereby, are amended, to be printed together with explanatory notes, to read as follows:

ARTICLE 205

DEATHS AND DISPOSALS OF HUMAN REMAINS

§205.19 Removal of human remains from place of death or termination of pregnancy.

(a) (1) Except as specified in this section, no person shall remove human remains from the place of death or termination of pregnancy unless a certificate of death or termination of pregnancy and a confidential medical report, if any, have been filed electronically with the Department by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, or unless such documents have been delivered to a funeral director, undertaker or to the person in charge of the City mortuary pursuant to §205.03 or §203.03, or unless a burial, cremation, interim or transportation permit has been issued pursuant to §205.21. Prior authorization of the Department shall not be required to remove human remains to a county in [a] the State contiguous to the City. However, an appropriate permit shall be obtained prior to burial or cremation of human remains, temporary holding of remains pursuant to subdivision (b) of §205.13, or transportation to any other area, as required pursuant to this Article. When a death or termination of pregnancy occurs under circumstances which do not require notification to the Office of Chief Medical Examiner,

the remains may be removed from the place of death, termination of pregnancy or autopsy to another place within the City or to a county within [a]the State contiguous to the City by a licensed funeral director or undertaker if such person has in his or her possession a certificate of death or termination of pregnancy including any confidential medical report, or if such certificate and confidential medical report, if any, have been filed electronically with the Department by the person required to report the death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03. If, however, the death or termination of pregnancy is required to be reported to the Department by the Office of Chief Medical Examiner pursuant to §205.03(a)(3) or §203.03(a)(4), the remains may be removed from the place of death, termination of pregnancy or autopsy by the funeral director or undertaker if either he or she has received a completed death or termination of pregnancy certificate from the medical examiner who had taken charge of the remains, or if a death or termination of pregnancy certificate has been electronically filed by the Office of Chief Medical Examiner.

(a)(2) Notwithstanding the requirements of paragraph (1) of this subdivision, in the case of a death from natural causes occurring elsewhere than in a hospital or hospice, such remains may be removed only to a funeral establishment within the City or within a county of [a] the State contiguous to the City if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the Office of Chief Medical Examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate pursuant to paragraph (2) of subdivision (a) of §205.03, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death.

Notes: Paragraphs (a)(1) and (2) of §205.19 were amended to correct an inadvertent error made at the time the provisions were presented for adoption in September 2009. The proposed amendment would replace the word “a” with the word “the,” as the provisions read when it was proposed in June 2009.