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-----Original Message-----

From: Timothy M. Shay [mailto:tms08@health.state.ny.us]
Sent: Tuesday, January 20, 2009 4:33 PM
To: Christopher Boyd
Cc: Brian D. Devine; Douglas C. Sackett; Eric J Wiegert; Timothy M. Shay
Subject: Re: FW: Article 165 mailing to NYSDOH

We have completed the review of Article 165 of the NYC Health Code and believe it to be consistent with 6-1 and 6-3, with the following clarifications and two typos as follows:

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The highlighted/Red text "A" in section 165.15(c)(1)(C)(6) below should be removed.

Section 165.15 (b)(2)(B)(2)(i) should be omitted because it is redundant with 165.15 (b)(2)(B)(1)(i).

The age requirement section specified in 165.15 (b)(2)(B)(2) for level III implies that the person may have training as a level II lifeguard.

If this is the case no additional training is required for aquatic injury prevention and emergency response as specified in §165.15(b)(2)(B)(2) because lifeguard training exceeds the training specified for level III A.

"Certification in aquatic injury prevention and emergency response" in section 165.15(c)(1)(C)(6) is changed to "lifeguard management" in section 165.15 (b)(2)(B)(2). This is not appropriate because LG management contains additional training beyond what is necessary for Level IIIA staff. I suggest using similar wording in Subpart 6-1 which says:

Supervision Level III staff shall possess certification in aquatic injury prevention and emergency response. No person shall be qualified under this paragraph unless such a person possesses certification in Lifeguard Management issued by the American Red Cross or a certificate issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of training in aquatic injury prevention and emergency response. Certification shall be valid for the time period specified by the certifying agency, but may not exceed a consecutive three-year period from course completion.

I have attached the proposed text for these concerns

(B) Supervision Level III and IIIA.

(1) Level III

(i)[(1)] Shall be at least 18 years old (or 16 years old if certified as Level II Lifeguard); and

(ii)[(2)] Shall possess a current American Red Cross

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Community-Cardiopulmonary Resuscitation (CPR) certificate, or equivalent certificate approved by the New York State Department of Health. Certification period shall not exceed one year, except if assisting a lifeguard as specified in §165.15 (b)(2)(B)(2) below; and (iii)[(3)] Shall be competent to [:

- (i) understand and apply the provisions of this Article and the Pool Safety Plan; and
- (ii) evaluate environmental hazards; and
- (iii) use lifesaving equipment; and
- (iv) control bathers and crowds.]

understand and apply the provisions of this Article and the Safety Plan, evaluate environmental hazards, use lifesaving equipment, and control bathers and crowds.

(2) Level IIIA. A supervision Level IIIA staff assists a lifeguard with direct supervision of bathers as

specified in §165.15 (c)(1)(C)(6) below. The Level IIIA staff:

- (i) Shall be at least 18 years old; and
- (ii) Shall possess a current American Red Cross Lifeguard Management certificate or New York State Department of Health approved equivalent certification. Certification period shall be valid for the time period specified by the certifying agency but shall not exceed three years.

(C) Supervising Lifeguard.

(1) Supervising lifeguard shall have the qualifications for Supervision Level II.

(2) Supervising lifeguard shall have at least two years adequate life guarding experience.

(c) Supervision.

(6) Pools in usage during instructional activities: [When instructional swimming classes are taught by lifeguards, supplementary supervisory staff meeting at least Supervision Level III requirements, shall be present when the instructional activities may distract instructing lifeguards from direct supervision of all bathers.] When instructional activities occur, including but not limited to learn to swim programs, physical education classes and swim team activities, and the required Supervision Level II staff (lifeguards, as per §165.15(b)(2)) provide the instruction, at least one additional staff meeting at least Supervision Level III must be provided for each aquatic supervisory staff engaging in instructional activities. When a Supervision Level III staff is utilized to assist a Supervision Level II (lifeguard) staff with direct supervision of bathers during instruction, the Supervision Level III staff must possess certification in aquatic injury prevention and emergency response as specified in §165.15(b)(2)(B)(2) above. The written Safety Plan must describe the duties, positioning at pool side and interaction between the lifeguard and Level III staff which ensures adequate bather supervision and emergency response. Note: where instructors, in the water or on the deck, supplement the required on-deck lifeguard(s) who do not provide instruction, no extra Level III supervision is required.

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165.42(4), Change "no " to "not"

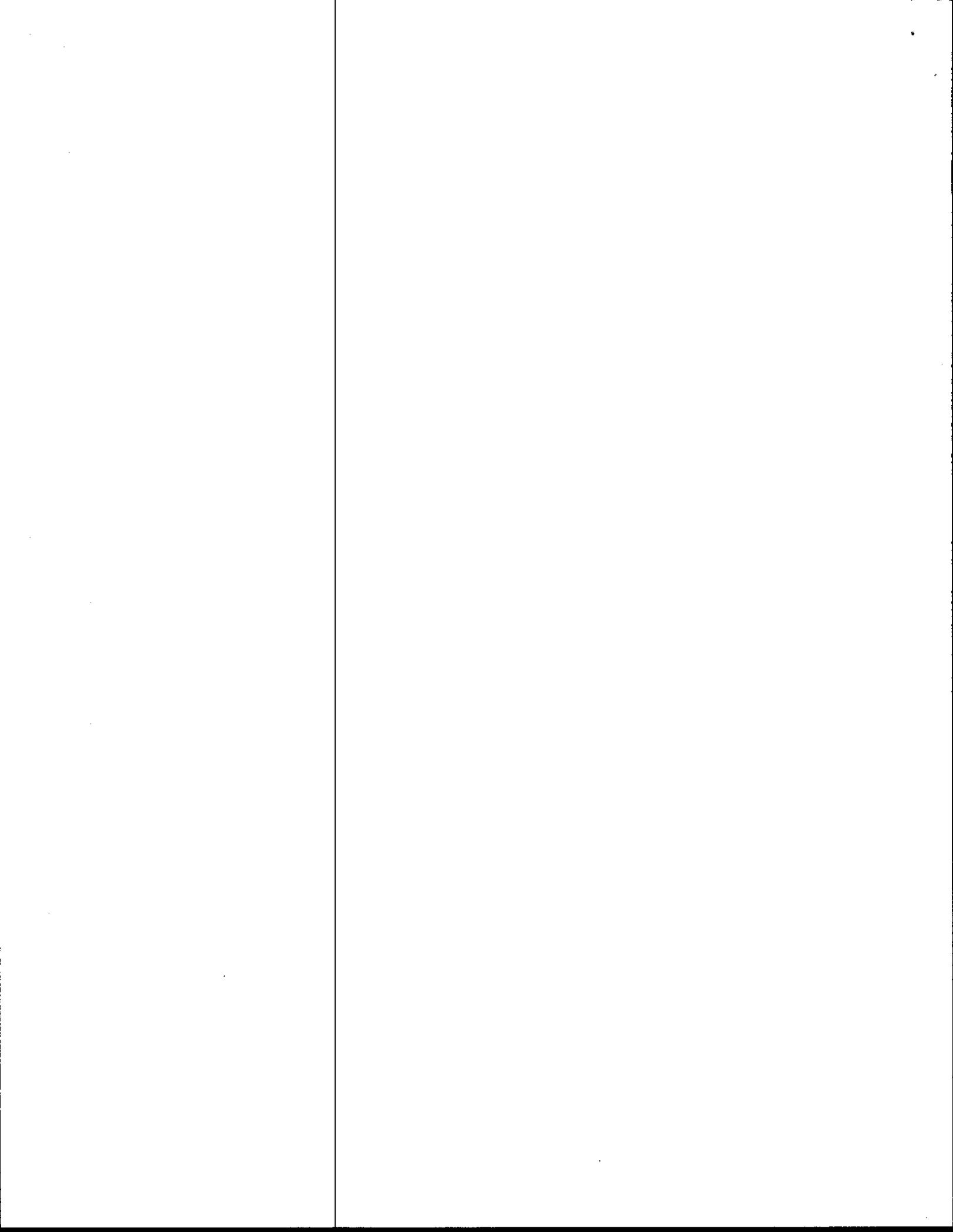
"Christopher
Boyd"
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"Douglas C. Sackett"
<dcs02@health.state.ny.us>,
12/19/2008 11:45 "Timothy M. Shay"
AM <tms08@health.state.ny.us>, "Eric J
Wiegert"
<ejw05@health.state.ny.us>, "Brian
D. Devine"
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cc

Subject
FW: Article 165 mailing to NYSDOH

Attached for your information and comment are proposed changes to the Health Code.

(See attached file: 165_Sackett.PDF)(See attached file: 165_Shay.PDF)(See attached file: 165_Wiegert.PDF)(See attached file: NOI-Article 165-December2008final.doc)

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Local 508, New York City Lifeguard Supervisors
District Council 37, AFSCME, AFL-CIO
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New York, New York 10007

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DOMINIC/SECRETARY'S OFFICE
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125 Barclay Street, Room 403
New York, New York 10007

FEB -2 A 10: 23

January 29, 2009

VIA FAX 212-788-4315/FIRST CLASS MAIL

Board of Health
New York City Department of Health and Mental Hygiene
125 Worth Street, CN-31
New York, New York 10013

Attention: Rena Bryant, Secretary to the Board of Health

Re: Proposed Changes to Article 165 of the New York City Health Code

Honorable Members of the Board of Health:

Locals 461 and 508, DC37, AFSCME, AFL-CIO represent approximately 1200 Lifeguards and Lifeguard Supervisors ("Water Safety Professionals") employed by the New York City Department of Parks and Recreation ("DPR"). We provide for the water safety of patrons of New York City's fourteen miles of beaches and more than sixty pools under the jurisdiction of DPR. On behalf of the Water Safety Professionals we represent, we submit these comments with regard to the changes the New York City Department of Health ("Department") proposes to make to Article 165 of the New York City Health Code ("Code"). Specifically we address the proposed changes to Section 165.15 of the Code wherein the Department proposes to permit individuals who do not possess lifeguard certification and training to assist a lifeguard at pools when the lifeguard is conducting instructional activities. Any change to the Code which permits individuals not trained and certified as lifeguards to be the person responsible for supervising bathers eviscerates the purpose of the Code which is to ensure to the people of the City of New York the highest standard of water safety.

The Code is firm that a lifeguard cannot engage in activities which could distract from life guarding duties. Clearly, a lifeguard conducting a learn to swim program, physical education classes or swim team activities cannot be responsible for ensuring the safety of bathers during such period of instruction. To permit an individual not trained as a lifeguard to be the primary provider of water safety at a pool during such times is to place the safety of all bathers at risk. Only a person certified with lifeguard training and skills can immediately assess and *respond* to the dangers inherent in water activity.

It is the responsibility of the Board of Health to provide New Yorkers with the highest standards of safety. Any change to the Code which permits persons not trained as lifeguards to have the first responsibility to ensure the safety of other bathers is antithetical to the purpose of the Code, which is to maintain the highest standards of safety.

It is our understanding that the Department proposes to amend the Code to comport with the standards established by the New York State Department of Health in the State Sanitary Code. Such minimal standards, however, should not be the standard employed by the City. Whereas, outside of the City, it is difficult to find individuals certified as lifeguards who are able to work in the non-summer months, by contrast, in the City of New York, hundreds of certified lifeguards are available throughout the year to work as lifeguards at pools in the City. There is no lack of adequately trained water safety professionals who are available to provide the highest level of water safety to pool patrons.

If the Board of Health is interested in modifying the present Code, it should make such changes so as to ensure the safest possible pool environment. To permit individuals other than certified lifeguards to provide for water safety at pools in the City of New York does not provide the safest environment. By placing untrained individuals who do not possess the ability to immediately respond to life-threatening situations as pool safety providers is to subject our citizens to unnecessary risk to their health and safety.

If you wish to discuss proposed changes to the Health Code, please contact us.

Respectfully submitted,

Peter Stein
President, Local 508, DC37

Franklin Paige
President, Local 461, DC37