

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF ADOPTION
OF AN AMENDMENT TO ARTICLE 181
OF THE NEW YORK CITY HEALTH CODE

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 said Charter, a notice of intention to amend Article 181 of the New York City Health Code (the “Health Code”) was published in the City Record on June 19, 2012 and a public hearing was held on July 23, 2012. At its meeting on September 13, 2012, the Board of Health adopted the following resolution.

Statutory Authority

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter.

- Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the authority of the Department of Health and Mental Hygiene (the “Department” or “DOHMH”) extends.
- Section 1043 grants the Department rule-making authority.

The amendment reflects the Department’s historic power to supervise the control of communicable disease in New York City. Section 556 of the Charter provides the Department with broad jurisdiction to regulate all matters affecting health in the City of New York. The control of communicable disease is a core public health function.

Statement of Basis and Purpose

The purpose of this amendment is to require written consent from a parent or legal guardian when direct oral suction will be performed during his or her son’s circumcision. The written consent will require that the parent or guardian has been told that the Department advises against direct oral suction because of certain risks associated with the practice, including infection with herpes simplex virus and its potentially serious consequences, such as brain damage and death. Knowing the risks posed by direct oral suction, a parent or legal guardian can then make an informed choice about whether it should be performed as part of the circumcision.

The amendment requires persons performing circumcisions which include direct oral suction to retain copies of signed consent forms for at least one year and to make them available to the Department upon request.

Background

Male circumcision, which involves cutting off skin and leaving an open wound on the penis, carries a risk for infection. It should be performed under sterile conditions to protect the open wound from infection. There is a practice involving direct contact between the mouth of a person performing or assisting in performing a circumcision and the infant’s circumcised penis (‘direct oral suction’). When

direct oral suction is performed as part of circumcision, there is a risk that the person performing direct oral suction will transmit herpes simplex virus to the infant being circumcised.

Between 2004 and 2011, the Department learned of 11 cases of laboratory-confirmed herpes simplex virus infections in male infants following circumcisions that were likely to have been associated with direct oral suction. Two of these infants died, and at least two others suffered brain damage. The parents of some of these infants have said that they did not know before their child's circumcision that direct oral suction would be performed. In addition, since 2004, the Department has received multiple complaints from parents whose children may not have been infected with herpes simplex virus or other infectious diseases but who were also not aware that direct oral suction was going to be performed as part of their sons' circumcisions.

The amendment

The new Health Code provision, §181.21 -- Consent for direct oral suction as a part of circumcision -- requires that if direct oral suction is to be performed as part of a circumcision, the person performing the circumcision must obtain prior written consent from a parent or legal guardian. The written consent would document that a parent has been given notice that direct oral suction is to be performed and that the parent has been informed that the Department advises against direct oral suction because the practice carries a risk of transmission to the infant of herpes simplex virus infection. A copy of the signed consent form must be given to the parent or legal guardian signing the consent. The person performing the circumcision will have to maintain the original for at least one year after the circumcision is performed, and make it available for inspection at the request of the Department.

In response to comments received, the resolution has been amended to allow use of a consent form other than one approved and provided by the Department if the form used contains certain elements deemed necessary for a parent or legal guardian to document that she or he has given consent. The language of the consent now includes a reference to the Department's concerns about the risks of direct oral suction, and indicates that the consent must be obtained by the person performing the circumcision whenever direct oral suction is performed regardless of whether this person performs direct oral suction himself or it is done by another person assisting him.

The resolution is as follows:

Note- matter in [] brackets to be deleted;

Matter underlined is new.

RESOLVED, that Article 181 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, and the same hereby is, amended, by adding a new §181.21, to be printed together with explanatory notes, to read as follows:

§ 181.21 Consent for direct oral suction as part of a circumcision.

(a) Direct oral suction means contact between the mouth of a person performing or assisting in the performance of a circumcision and an infant's circumcised penis.

(b) Written consent required. A person may not perform a circumcision that involves direct oral suction on an infant under one year of age, without obtaining, prior to the circumcision, the written signed and

dated consent of a parent or legal guardian of the infant being circumcised using a form provided by the Department or a form which shall be labeled “Consent to perform oral suction during circumcision,” and which at a minimum shall include the infant’s date of birth, the full printed name of the infant’s parent(s), the name of the individual performing the circumcision and the following statement: “I understand that direct oral suction will be performed on my child and that the New York City Department of Health and Mental Hygiene advises parents that direct oral suction should not be performed because it exposes an infant to the risk of transmission of herpes simplex virus infection, which may result in brain damage or death.”

(c) Retention of consent forms. The person performing the circumcision must give the parent or legal guardian a copy of the signed consent form and retain the original for one year from the date of the circumcision, making it available for inspection if requested by the Department.

Notes: §181.21 was added to Article 181 by resolution adopted September 13, 2012 to require that persons who perform circumcisions on infants under one year of age that include the application of direct oral suction obtain the written consent of a parent prior to performance of the circumcision and warn the parent of the Department’s concerns about the risks of infection posed by direct oral suction.

RESOLVED, that the Table of Section Headings of Article 181 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed together with explanatory notes, to read as follows:

ARTICLE 181

PROTECTION OF PUBLIC HEALTH GENERALLY

§181.01 **Definitions.**

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§181.21 **Consent for direct oral suction as part of a circumcision.**

Notes: Article 181 was amended by resolution adopted September 13, 2012 adding a new §181.21 requiring written parental consent for circumcisions performed on an infant under one year of age that includes the application of direct oral suction to the infant’s penis in view of the Department’s concerns about the risks of transmission of infection to such infants through the practice of direct oral suction.