**THE COUNCIL OF THE CITY OF NEW YORK**



**COMMITTEE REPORT OF THE**

**COMMITTEE ON RULES, PRIVILEGES AND ELECTIONS**

**Hon. Karen Koslowitz, Chairperson**

**December 15, 2021**

**Council Chambers**

**City Hall**

**Topic**: ***New York City Board of Health* – (Mayor’s nominee for appointment upon advice and consent of the Council)**

* **Gail B. Nayowith [Preconsidered-M 358]**

Pursuant to *New York City Charter* (“*the Charter*”) § 553, there shall be in the New York City Department of Health and Mental Hygiene (“the Department”)[[1]](#footnote-1) a Board of Health (“the Board”)[[2]](#footnote-2), the Chairperson of which shall be the Commissioner of the Department.

The main function of the Board is to promulgate the *New York City Health Code* (“Code”), which can encompass any matter within the jurisdiction of the Department, and has “the force and effect of law.” [*Charter* § 558.] The Board may legislate on “all matters and subjects to which the power and authority of the Department extends.” [*Charter* § 558(c).] The jurisdiction of the Department is among the most extensive and varied of all City agencies. Except as otherwise provided by law, the Department has jurisdiction to regulate all matters affecting health in the City and to perform all those functions and operations performed by the City that relate to the health of the people of the City, including but not limited to the mental health, mental retardation, alcoholism and substance abuse related needs of the people of the City. [*Charter* § 556.] The scope of the Department’s jurisdiction includes such diverse disciplines as communicable diseases, environmental health services, radiological health, food safety, veterinary affairs, water quality, pest control and vital statistics. New emerging pathogens and biological warfare are the most recent additions to the Department’s roster of concerns.

In addition to its primary legislative function in relation to the *Code*, the Board is charged with certain administrative responsibilities. The Board may issue, suspend or revoke permits (e.g., food vendor permits) or may delegate this duty to the Commissioner, in which case a party aggrieved by the decision of the Commissioner has a right of appeal to the Board. [*Charter* § 561.] The Board may declare a state of “great and imminent peril“ and take appropriate steps subject to Mayoral approval. [*Charter* § 563.] Other administrative functions of the Board are contained in the *Administrative Code of the City of New York*. One important function is to declare conditions as public nuisances and to order that such conditions be abated or otherwise corrected. [*Administrative Code* § 17-145.]

In addition to the Chairperson, the Board consists of ten members, five of whom shall be doctors of medicine who shall each have had not less than ten years experience in any or all of the following: clinical medicine, neurology, psychiatry, public health administration or college or university public health teaching. The other five members need not be physicians. However, non-physician members shall hold at least a Masters degree in environmental, biological, veterinary, physical, or behavioral health or science, or rehabilitative science or in a related field, and shall have at least ten years of experience in the field in which they hold such a degree. The Chairperson of the Mental Hygiene Advisory Board[[3]](#footnote-3) sits as one of the ten board members, provided that such individual meets the requirements for Board membership of either a physician or non-physician member.

The nine Board members other than the Chairperson and the member who shall be the Chairperson of the Mental Hygiene Advisory Board shall serve without compensation and shall be appointed by the Mayor, each for a term of six-years.[[4]](#footnote-4) In the case of a vacancy, the Mayor shall appoint a member to serve for the un-expired term. [*Charter* § 553(b).] The Mayor’s appointees are subject to the advice and consent of the New York City Council as set forth in *Charter* § 31.

The Commissioner shall designate such Department employees as may be necessary to the service of the Board, including an employee designated by him to serve as the Secretary to the Board. [*Charter* § 553 (c).]

Pursuant to *Charter* § 554, a member of the Board other than the Chairperson may be removed by the Mayor upon proof of official misconduct or of negligence in official duties or of conduct in any manner connected with his/her official duties, that tends to discredit his/her office, or of mental or physical inability to perform his/her duties. Prior to removal, however, the Board member shall receive a copy of the charges and shall be entitled to a hearing before the Mayor and to the assistance of counsel at such hearing.

If appointed, Ms. Nayowith, a resident of Manhattan, will replace Susan Klitzman and serve the remainder of a six-year term that expires on May 31, 2026. A copy of the candidate’s résumé is annexed to this briefing paper.

**PROJECT STAFF**

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1. On November 6, 2001, the voters of New York City approved the merger of the New York City Department of Health and the New York City Department of Health, Mental Retardation and Alcoholism Services to create a new agency called the Department of Public Health. The agency is presently known as the Department of Health and Mental Hygiene. [↑](#footnote-ref-1)
2. The ballot proposal approved by the City’s voters on November 6, 2001, expanded the Board’s membership from five to eleven members (including the Commissioner), while maintaining the current ratio of medical to non-medical personnel. Also, member terms were reduced from eight years to six years, and staggered to assure continuity. The Charter Revision Commission (the “Commission”) asserted that these changes would ensure that the Board is better able to address today’s “more complex public health threats and meet the new and emerging public health challenges of the future.” Also, the Commission reasoned that the expansion of the Board would “provide the opportunities to increase the variety of expertise represented, and allow for inclusion of representatives with experience relating to special health needs of different racial and cultural groups in the City.” Moreover, the Commission felt “a larger Board would also bring to bear greater diversity of academic, clinical and community perspectives on the broad spectrum of public health problems and issues that need to be addressed.” Report of the New York City Charter Revision Commission, *Making Our City’s Progress Permanent*, pp69-70 (September 5, 2001). [↑](#footnote-ref-2)
3. This body advises the Commissioner of Health and Mental Hygiene and the Deputy Commissioner for Mental Hygiene Services in the development of community mental health, mental retardation, alcoholism and substance abuse facilities and services and programs related thereto. Charter § 568. [↑](#footnote-ref-3)
4. The term of the Board of Health Chair, who is the Commissioner of Health, is not specified. The Chair of the Mental Hygiene Advisory Board can serve an unlimited number of four-year terms on that advisory Board and, thus, on the New York City Board of Health as well. Mental Hygiene Law § 41.11(d) and Charter § 568(a)(1). [↑](#footnote-ref-4)