Health Committee Staff

Ze-Emanuel Hailu, *Senior Legislative Counsel*

Emily Balkan, *Legislative Policy Analyst*

Sara Liss, *Legislative Counsel*

Lauren Hunt, *Finance Division*



## THE COUNCIL

**COMMITTEE REPORT OF THE HUMAN SERVICES Division**

*Jeffrey Baker, Legislative Director*

*Andrea Vazquez, Deputy Director, Human Services Division*

**COMMITTEE ON HEALTH**

*Hon. Mark Levine, Chair*

#### **March 26, 2019**

## Proposed Int. No. 1308-A: By Council Members Levine, Rosenthal, Powers, Yeger, Chin, Richards, Cohen, Levin, Rivera, Dromm, Cornegy, Ayala, Brannan, Salamanca, Espinal, Deutsch, Koslowitz, Reynoso, Perkins, Rose, Ampry-Samuel, Adams, Holden, Lancman, Cabrera, Gibson, Lander, Maisel, Treyger and Kallos

## Title: To amend the administrative code of the city of New York, in relation to redacting the name of physicians whose license has been surrendered or revoked from birth certificates

## Administrative Code: Subdivision a of section 17-169.

**I.** **Introduction**

 On March 26, 2019, the Committee on Health, chaired by Council Member Mark Levine, will hold a hearing on Proposed Introduction Number 1308-A (Int. 1308-A), a local law to amend the administrative code of the city of New York, in relation to redacting the name of physicians whose license has been surrendered or revoked from birth certificates. This legislation was originally heard at a hearing of this Committee on February 7, 2019, at which the Committee received testimony from the Department of Health and Mental Hygiene (DOHMH), and other interested parties.

**II. Background**

Importance of Birth Records

Birth records are “living” documents that are required in many contexts throughout a person’s life to prove identity, age, citizenship, to perform various activities, and to access essential services.[[1]](#footnote-2) Birth certificates in New York are required for a number of basic and important services including, but not limited to, obtaining professional certifications, obtaining drivers’ licenses and passports, demonstrating work eligibility, registering for school, obtaining access to public facilities, obtaining a gun permit, and obtaining access to public benefits.

New York State’s Medical Conduct Program

 The New York State Health Department’s Office of Professional Medical Conduct (OPMC) and the state Board for Professional Medical Conduct are responsible for investigating and adjudicating complaints against physicians, physician assistants, and specialist assistants.[[2]](#footnote-3) OPMC reviews thousands of claims every year.[[3]](#footnote-4)

Disciplinary action is warranted when a physician demonstrates incompetency, negligence, moral unfitness, is impaired by substances such as alcohol, willfully harasses or abuses a client amongst other actions.[[4]](#footnote-5) As a result of misconduct, a physician can face disciplinary action that can range from a fine or community service to the revocation or suspension of a medical license.[[5]](#footnote-6) The state Board for Professional Medical Conduct disciplines hundreds of physicians per year.[[6]](#footnote-7)

The Need to Alter One’s Birth Certificate

 Birth certificates issued by New York City include the name of the attendant at delivery. For some women, including Marissa Hoechstetter, the name of their children’s attendant at delivery is a doctor who sexually assaulted them.[[7]](#footnote-8) In 2015, Ms. Hoechstetter reported the assaults to the Manhattan District Attorney’s office, and was one of nineteen women who had come forward about this particular doctor.[[8]](#footnote-9) Despite pleading guilty to a criminal sex act in the third degree and forcible touching in 2016, the doctor was given no jail time.[[9]](#footnote-10) However, his medical license was revoked.[[10]](#footnote-11)

Ms. Hoechstetter has been unable to replace her daughters’ original birth certificate, despite many attempts to redact the name of the abusive doctor, because there is no formal protocol in place for removing a physician’s name if it is not there in error.[[11]](#footnote-12)

**III. Analysis of Proposed Int. No. 1308-A**

Proposed Int. No. 1308 would allow an individual to request that the Department of Health and Mental Hygiene redact the name of a physician from a birth record when that physician’s license has been surrendered or revoked by the New York State Office of Professional Medical Conduct. This legislation would take effect 120 days after it becomes law.

As originally introduced, this bill applied to suspended licenses, in addition to those that have been surrendered or revoked.

Proposed Int. No. 1308-A

By Council Members Levine, Rosenthal, Powers, Yeger, Chin, Richards, Cohen, Levin, Rivera, Dromm, Cornegy, Ayala, Brannan, Salamanca, Espinal, Deutsch, Koslowitz, Reynoso, Perkins, Rose, Ampry-Samuel, Adams, Holden, Lancman, Cabrera, Gibson, Lander, Maisel, Treyger and Kallos

..Title

A Local Law to amend the administrative code of the city of New York, in relation to redacting the name of physicians whose license has been surrendered or revoked from birth certificates

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 17-169 of the administrative code of the city of New York is amended by adding a new paragraph 3 to read as follows:

3. When the license to practice medicine of an attending physician listed on a given birth record has been surrendered or revoked by the New York state office of professional medical conduct, then upon request by either (i) the person whose birth the record documents, if eighteen years of age or older, or that person’s legal representative or (ii) the parent or legal representative of a person under the age of eighteen whose birth the record documents, the department shall issue a certified copy of the birth record with the identity of such physician redacted. Such request shall be made in the form or manner to be provided or approved by the department. Nothing in this paragraph requires a court order.

§ 2. This local law takes effect on January 1, 2020, except that the commissioner of health and mental hygiene may take such measures as are necessary for its implementation, including the promulgation of rules, before such date.

JG/ZH/SL

LS # 8728

3/05/19 1:25 PM

1. *Report and Recommendation of the Committee Regarding Revision of Policies with Respect to Change of Sex Designation on New York State and New York City Birth Certificates for Transgender Individuals,* New York County Lawyers’ Association (2012) available at <http://www.nycla.org/siteFiles/Publications/Publications1522_0.pdf>. [↑](#footnote-ref-2)
2. *Understanding New York's Medical Conduct Program - Physician Discipline*, New York State Department of Health (2016) available at<https://www.health.ny.gov/publications/1445/>. [↑](#footnote-ref-3)
3. *Id.*  [↑](#footnote-ref-4)
4. *Id.*  [↑](#footnote-ref-5)
5. *Id.*  [↑](#footnote-ref-6)
6. *Id.*  [↑](#footnote-ref-7)
7. *My Abuser’s Name Is On My Daughters’ Birth Certificates & I Won't Rest Until It's Removed*, Bustle (2018) available at

<https://www.bustle.com/p/my-abusers-name-is-on-my-daughters-birth-certificates-i-wont-rest-until-its-removed-12605285> [↑](#footnote-ref-8)
8. *Id.*  [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. *Id.* [↑](#footnote-ref-11)
11. *Id.; Patients Of Abusive OBGYNs Could Change Their Kids’ Birth Certificates If This NYC Bill Passes,* Bustle (2018) available at <https://www.bustle.com/p/patients-of-abusive-obgyns-could-change-their-kids-birth-certificates-if-this-nyc-bill-passes-15549278>; *New York City bill would let patients of abusive doctors amend birth certificates*, CBS News (2018) available at <https://www.cbsnews.com/news/new-york-city-bill-would-let-patients-of-abusive-doctors-amend-birth-certificates/>  [↑](#footnote-ref-12)