



Memorandum in Support

NYSBA #19

May 31, 2023

S.320A

By: Senator Salazar

A.109A

By: M of A L. Rosenthal

Senate Committee: Women's Issues

Assembly Committee: Rules

Effective Date: Immediately

AN ACT to amend the public health law, in relation to prohibiting drug and alcohol testing and screening of pregnant or postpartum individuals.

LAW AND SECTIONS REFERRED TO: Section 2509-b of the Public Health Law

NEW YORK STATE BAR ASSOCIATION **SUPPORTS THIS LEGISLATION**

This bill would prohibit drug or alcohol testing and screening of pregnant or postpartum individuals and newborns unless the individual consents and it is within the scope of medical care, or the testing or screening is necessary for a medical emergency.

The New York State Bar Association supports the premise of medical care being provided under informed consent of patients and newborns. Additionally, the New York State Bar Association supports the premise that physicians must be able to care for patients in medical emergencies absent informed consent that is unable to be obtained. Accordingly, the New York State Bar Association supports this legislation on informed consent for the reasoning set forth in the New York State Assembly Memo in Support for A.109-A, as set out below, inclusive of informed consent for drug testing and physicians maintaining their implicit responsibility as emergency and treating physicians in emergencies to provide medical care.

Justification

When a pregnant person comes to a hospital seeking medical care, there is an expectation that they will receive only services to which they consent and seek. The involuntary drug testing of pregnant and perinatal persons not only runs counter to this, but it serves as a disincentive to the pursuit of medical support in childbirth. New York State currently ranks 30th among all states with a maternal mortality rate at 25 deaths per 100,000 live births.

In cases where a doctor deems it necessary to perform an emergency drug test on an incapacitated patient, unable to consent to such testing, it is equally vital that the results of this testing be kept confidential and not used for any purpose outside of medical diagnoses and treatment.

This legislation requires physicians and other medical professionals to seek informed consent before performing a drug or alcohol test or screen on a pregnant person, a person up to one year postpartum or a newborn, unless such testing is necessary for emergency purposes. This legislation will help to preserve the necessary trust between a pregnant or perinatal person in need of medical support, and their provider, and will remove a potential disincentive to seeking care.

For the above reasons, the New York State Bar Association **SUPPORTS** this legislation.