



## Commission on Human Rights

**DATE: NOVEMBER 16, 2020**

**CONTACT:** Alicia McCauley, [amccauley@cchr.nyc.gov](mailto:amccauley@cchr.nyc.gov), [212-416-0105](tel:212-416-0105)

### **NEW YORK CITY COMMISSION ON HUMAN RIGHTS LAUNCHES INVESTIGATIONS INTO THREE MAJOR PRIVATE HOSPITAL SYSTEMS' PRACTICES OF DRUG TESTING NEWBORNS AND PARENTS**

*The investigation seeks to determine whether the hospitals' policies and practices target Black and Latinx parents and infants*

**NEW YORK**—Following concerns from advocacy groups regarding drug testing practices that may disproportionately target Black and Latinx parents and infants, the New York City Commission on Human Rights announces investigations into Montefiore, Mount Sinai, and New York Presbyterian hospitals, which, collectively, have facilities in the Bronx, Manhattan, Brooklyn, and Queens. The investigations examine the hospitals' policies and practices regarding drug testing of pregnant people and newborns to assess whether those policies and practices demonstrate discriminatory racial bias against Black and Latinx families. The Commission-initiated investigation seeks to root out and end any such discriminatory practices.

Although a positive toxicology test does not merit a call to the State Central Register of Child Abuse and Maltreatment (SCR), advocates have consistently reported that hospitals continue to use a single unconfirmed positive screen as a reason to report parents to the SCR. If the SCR accepts the report, the local child welfare agency is required by law to launch a child protection investigation.

“Achieving racial justice requires systemic change across all aspects of daily life, not least of all in the medical system,” said **Sapna V. Raj, Deputy Commissioner of the Law Enforcement Bureau of the NYC Commission on Human Rights**. “The Commission is seeking to root out any discriminatory policies or practices and prevent further harm to these communities. The manifestation of anti-Black racism in medical settings is a well-known and entrenched problem, and, under the leadership of Commissioner Carmelyn P. Malalis, confronting such racism has been, and continues to be, a top priority.”

Racial bias in medical settings is well-documented and leads to disproportionately high negative health outcomes for Black and Latinx patients, especially people receiving obstetric care. People of color are often dismissed when raising concerns about their health, given less pain medication, and face assumptions about their health and well-being based on race. In New York City, Black women face a maternal mortality rate that is 12 times higher than white women. Further, studies show that Black women are far more likely than white women to be drug tested before or immediately following childbirth despite similar rates of drug use in both populations. These

factors can lead to mistrust of medical providers, fear of medical settings, and elevated stress levels, as well as act as a deterrent in seeking necessary medical treatment.

The New York City Human Rights Law gives the Commission broad authority to initiate investigations on behalf of the City. The law protects people in housing, employment and public accommodations, including medical settings like hospitals and clinics. In 2019, the Commission convened a hearing and released a subsequent report on pregnancy and caregiver discrimination in New York City. Advocates and individuals [testified about experiences of race-based discrimination while seeking prenatal, delivery, and postpartum care](#), as well as experiences of discrimination in everyday facets of child-rearing and caregiving. Additionally, in June 2020, the Commission [released a report which explored in-depth the experiences of Black New Yorkers, including firsthand accounts of racial bias in medical settings](#).

The Commission is committed to fighting anti-Black racism in New York City, including eradicating dehumanizing practices that harm Black families. Of the 27 protected classes under the New York City Human Rights Law, claims alleging discrimination based on race are consistently one of the highest reported. Over the past year, the Commission has announced major settlements addressing [systemic racism in the fashion industry](#) and addressing [race discrimination on the basis of hair](#).

The New York City Human Rights Law prohibits discrimination based on race, gender, national origin, immigration status, and over 20 other protected classes in housing, employment, and public accommodations. If you have experienced discrimination, call the NYC Commission on Human Rights by dialing (212) 416-0197, or visit the Commission’s website at [NYC.gov/HumanRights](http://NYC.gov/HumanRights).

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“Drug testing of pregnant people and newborns has long been implemented in racially discriminatory ways that put Black and Latinx families at higher risk for destructive state policing and punishment. This investigation is an important step toward abolishing structural racism in health care and child welfare and creating more just and equitable approaches to meeting people’s needs.” – **Dorothy E. Roberts, Professor of Africana Studies, Law, and Sociology, University of Pennsylvania, and author of *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* and *Shattered Bonds: The Color of Child Welfare*.**

“There is a long history (dating back to the 1990s) of racially discriminatory drug screening of newborns in NYC hospitals which leads to disproportionate child welfare surveillance and separation of newborns from their parents during the most critical time for bonding. This is a reproductive justice issue that jeopardizes the human right for Black birthing and parenting people to raise their children free from harm. The NYC Commission on Human Rights’ investigation is timely as scholars and activists in NYC and across the country are demanding the dismantling of oppressive systems of surveillance and violence that target Black people, including birthing people and their families. Hospitals should provide health care and supportive services without bias, and not disrupt families nor deter them from seeking that care for fear of

losing their children.” – **Lynn Roberts, PhD, Associate Dean, CUNY School of Public Health and Health Policy, Emeritus Board Member of SisterSong and Co-Editor/Author of *Radical Reproductive Justice: Foundation, Theory, Practice, Critique* (Feminist Press, 2017).**

“The job of hospitals is to provide care and support to people -- not to serve as an extension of the punitive and carceral state for black and brown people. The NYC Commission on Human Rights’ work to prevent the perversion of hospitals’ functions is absolutely key. The city will be a more humane place because of it.” – **Dr. Khiara M. Bridges, Professor of Law, UC Berkeley School of Law, author, *Critical Race Theory: A Primer* (2019), *The Poverty of Privacy Rights* (2017), and *Reproducing Race: An Ethnography of Pregnancy as a Site of Racialization* (2011).**

“Today, my faith in our justice system was cautiously restored thanks to the announced investigation of potentially racist practices by specific hospitals. I have seen too many Black families pushed to the brink of disintegration merely because the mother tested positive for a recreational drug on a urine toxicology exam. Mind you, drug use in and of itself does not compromise an individual’s ability to perform parental duties. And certainly, a drug positive urine test does not provide any information about the user’s current state of intoxication or her or his ability to function appropriately.” – **Carl L. Hart, Ziff Professor of Psychology (in Psychiatry) at Columbia University and the author of the forthcoming “Drug Use for Grown-ups: Chasing Liberty in the Land of Fear”**

“This investigation into practices that criminalize Black women and can destroy families is a crucial step in the NYC Commission on Human Rights’ commitment to rooting out anti-Black racism in our city.” – **Cathy Albisa, Commissioner, NYC Commission on Human Rights, who also serves as Vice President, Institutional and Sectoral Change, Race Forward**

“The New York City Commission on Human Rights is taking an important first step investigating unjust hospital practices against Black and Latinx parents and their families. To create a world where the dignity and integrity of all families is valued and supported, we must end racial inequity in the surveillance and criminalization of drug use—especially at such a vulnerable moment as childbirth. This investigation, the first of its kind by a New York City governmental agency, is an opportunity to expose the decades of injustice and medical racism against Black and Latinx parents and their families.” – **Erin Miles Cloud, Co-Director and Co-Founder, Movement for Family Power**

“In this particular moment, and always, when our communities are fighting against racial discrimination and discrimination within healthcare systems, we expect New York City to provide an example for how to not only commit to non-discriminatory practices, but to be held accountable when something of this scale goes under acknowledged for as long as it has. This particular investigation is so critical not only because of the racial and class discrimination, but the inherent gender discrimination that is present in survivor narratives, testimonies, and truths, shed light on how urgent the pursuit of a full, thorough and comprehensive investigation is. This is urgent. We are so grateful that the Commission is moving forward in the right direction.” – **Sevonna Brown, Associate Executive Director, Black Women's Blueprint**

“We applaud the New York City Commission on Human Rights’ investigation into the practice of hospitals targeting Black and Latinx pregnant people with non-consensual drug tests, and the Commission's commitment to rooting out racism in medical settings. In our work as family defense advocates, we have seen firsthand the harm that results when medical care providers target pregnant people and their newborns with non-consensual drug tests and report those families to authorities. Rife with the same racial disparities present in the so-called ‘child welfare’ system, hospitals’ ‘test and report’ practices surveil, stigmatize, and criminalize Black and Latinx pregnant people when they should instead be treating them with the support and dignity we all deserve.” – **Miriam Mack, Policy Counsel, Family Defense Practice, The Bronx Defenders**

“Separating babies from their mother at birth due to the results of a mother’s and/or child’s bodily fluids taken without consent and without an emergency need to do so is criminal and, should viewed as such, it’s no different than any other illegal search and seizure. The harms created by the separation does not justify the claim of protecting children.” – **Joyce McMillan, Parent Activist, JMacForFamilies, Founder Parent Legislative Action Network (PLAN)**

“New Yorkers deserve a just, effective health care system that protects their health and human rights. Health care services should never be used as an opportunity to racially profile, police, and punish pregnant people and parents of color. Discriminatory drug testing practices cause lasting harm to children and families and create unnecessary barriers to maternal health care in a city where Black and Brown women already suffer and die from pregnancy complications at unconscionable rates.” – **Lourdes Rivera, Senior Vice President, U.S. Programs, Center for Reproductive Rights**

“Parents deserve to feel safe and supported when they access our hospitals. When health institutions like hospitals prioritize acting as enforcement actors by conducting capricious and racially biased drug testing, that erodes public health and makes it harder to ensure we can give soon-to-be-parents the support they need and can result in disastrous outcomes. We applaud the NYC Commission on Human Rights for investigating hospital policies that target Latinx and Black pregnant people. Our city deserves a healthcare system that provides support and centers individual and family well-being, not one that punishes and surveils in line with the war on drugs.” – **Kassandra Frederique, Executive Director, Drug Policy Alliance**

“Black and Brown families have continually faced fear and uncertainty that comes with birthing in NYC hospitals due to the usage of systems of oppression like child protective services to profile new and expecting parents. It is time for transparency and institutional accountability to the families who have been harmed by medical racism that prevails through the use of illegal drug testing throughout the NYC hospital system.” – **Chanel Porchia Albert CD, CPD, CLC, CHHC, Founder and CEO of Ancient Song Doula Services and Commissioner on NYC Commission for Gender Equity**

“NAPW applauds this investigation and the New York City Commission on Human Rights’ attention to the costly, selective and medically insupportable drug testing of Black and Brown pregnant patients and newborns. The Commission's investigation of disproportionate testing of

Black and Brown patients is desperately needed. Drug tests on pregnant patients are typically carried out without specific informed consent and lack even the minimum safeguards for accuracy required under federal regulations for workplace drug testing. At the same time, such testing undermines patients' trust in their health care providers and leads to unjustified separations and family-destructive reports to child welfare authorities. Whatever the findings of the investigation, we are confident that it will bring us one step closer to a health care system that provides all patients, including Black, Brown and pregnant patients, with supportive care rather than suspicion and surveillance." – **Lynn Paltrow, Executive Director, National Advocates for Pregnant Women**

"Black pregnant people are subjected to disproportionate testing for drug use during their pregnancies and face severe racial disparities in the postpartum setting. Our hospitals should be practicing harm reduction during pregnancies rather than adding the threat of family separation. This investigation by the commission using an anti-Black racism frame is a welcome intervention and we hope it will lead to more fair and just outcomes for Black pregnant people and their children." – **Vince Warren, Executive Director, Center for Constitutional Rights**

"Racial discrimination in drug testing pregnant and parenting patients creates and compounds harms and misuses critical resources in New York City. The Commission's investigation is an important step in addressing this problem and the Clinic hopes it will facilitate needed change." – **Sarah Wheeler, Supervising Lawyer, NYU Law Reproductive Justice Clinic, Sally Burns, Faculty Director, NYU Law Reproductive Justice Clinic**

"The disproportionate drug testing of Black and Latinx mothers and newborns and resulting over-reporting to child welfare authorities is a well-known reality in many neighborhoods of New York City. This is racial inequity hiding in plain sight and it demands scrutiny." – **Chris Gottlieb, Co-Director, NYU School of Law Family Defense Clinic**

"As attorneys who represent parents in family court, we regularly see mothers taken to court leading to traumatic family separation based on invasive and non-consensual drug tests when mothers give birth. The drug testing practices in New York City hospitals overwhelmingly target Black and Latinx mothers and newborns, and lead to medical staff making unnecessary calls to the State Central Register solely because a mother or newborn tests positive. A positive test is not evidence of a mother's inability to parent, and staff are not required to and should not be calling in reports simply because of a positive test. At a time when mother and child bonding is so crucial, racially-biased testing practices that ensnare new mothers into the foster system cause lasting harm." – **Lauren Shapiro, Managing Director, Family Defense Practice, Brooklyn Defender Services**

"Pregnant people should not lose their rights to respectful and confidential health care when they seek prenatal care. This betrayal of trust is not an abstract rights violation -- discriminatory reporting practices can have devastating long term consequences when mothers and newborns are separated at birth. If we care about families, we need to end these discriminatory policies." – **Cynthia Soohoo, Co-Director of the Human Rights & Gender Justice Clinic at the City University of New York School of Law**

“This critically important investigation by the Commission on Human Rights will intervene in the ‘womb to prison pipeline’, the racist surveillance of Black and Latinx newborns and parents by health care providers in concert with the police. This new investigation reflects the idea that in health care settings, no New Yorker should be seen as a suspect, especially when that treatment reflects racial bias and stereotypes.” – **Katherine Franke, the James L. Dohr Professor of Law at Columbia University**

“This country’s history of reproductive coercion and violence, namely against enslaved Black women, Latinas, Indigenous women and women of color, has laid the foundation for social norms and policies that ultimately communicate who is considered deserving or fit for motherhood – this must stop. These conditions have resulted in practices, such as the routine, medically unnecessary practice of drug-testing pregnant and laboring people, that undermine people’s health, separate families, open doors to surveillance and criminalization of pregnancy, and reinforce stigma and discrimination. The NYCLU applauds the NYC Commission on Human Rights’ investigation, and calls on all of our health care institutions and state actors to end family separation that is rooted in structural inequities, ableism, white supremacy and patriarchy.” – **Katharine ES Bodde, Senior Policy Counsel, New York Civil Liberties Union**

“We know from our work supporting mental health services to children and families that early disruptions to the child-parent bond can be traumatic and have lasting consequences. Our city’s hospitals should not perpetuate practices that lead to disproportionate family separations in Black and Latinx communities.” – **Rosemonde Pierre-Louis, Chief Operating Officer, NYU McSilver Institute for Poverty Policy and Research**

“The National Center for Law and Economic Justice applauds the New York City Commission on Human Rights’ commitment to investigating possible racial and ethnic discrimination in the provision of obstetric services that may adversely affect access to healthcare for pregnant women of color while threatening the stability of the families of those women. Inequality and discrimination in obstetric policies and services have long term consequences for the physical, psychological and economic health of families of color. Those children and families deserve fairness and equality and the opportunity to build healthy and supportive families.” – **Dennis Parker, Executive Director, National Center for Law and Economic Justice**