

## **Hospital Prototype By-laws Frequently Asked Questions**

### **General Questions**

#### **1. Why is the OHA releasing new Prototype By-laws?**

The OHA's 2010 Hospital Prototype Corporate and Board-Appointed Professional Staff By-laws (Prototype By-laws) have been developed as a best practice guide for hospitals to use when developing their own by-laws.

Hospital governance practices have changed since the Prototype By-laws were last updated in 2003. Recommendations made by the Auditor General highlighted the value of skills-based hospital boards and the importance of recruiting board members with the required competencies to avoid conflicts of interest. The jury in the Dupont/Daniel Inquest made recommendations aimed at strengthening the hospital-physician relationship and ensuring and promoting the safety of hospital staff and patients.

The 2003 Prototypes are simply not reflective of current practices, and as a result, recent adoption by hospitals has been minimal.

These are just a few examples of why the OHA believes that it is essential to issue new Prototype By-laws for the hospital sector. Adoption of the Prototype By-laws to the greatest extent possible demonstrates continued hospital leadership in improving hospital governance practices and ensures consistency with contemporary legislative and public policy imperatives.

#### **2. Why are the new Prototype By-laws not a joint initiative with the OMA?**

In 2008, a Joint OHA/OMA Task Force was established to provide overall direction and support to a review of the *Public Hospitals Act* and a targeted review of the 2003 OHA/OMA Prototype By-laws. The Task Force concluded its work in March 2009 because the OMA declined to continue discussions with the OHA. The OHA then proceeded on its own to develop new Prototype Hospital By-laws that we believe are well-suited to improving health system performance.

#### **3. Does the OMA have an opinion or comment on the new Prototype By-laws?**

OMA was invited to, and attended the By-laws Stakeholder Briefing which was held on February 10, 2010. The OMA President's Report dated February 25, 2010 stated, "the OMA's Legal Services and Health Policy departments, in co-operation with the Canadian Medical Protective Association (CMPA), are reviewing the OHA Prototype Bylaws and we will inform members of their analysis when it is complete". On April 6, 2010 the OMA issued a Background Paper on the Board-Appointed Professional Staff By-law, detailing various issues of concern

identified by both OMA and the CMPA. The OHA has since developed a summary of those issues and commentary for hospitals to consider when moving forward with implementation and adoption. (See OHA *Legislative Update* dated April 2010, “OMA Response to OHA Prototype Board-Appointed Professional Staff By-law”)

#### **4. How do the new Prototype By-laws differ from the current Prototype?**

The Prototype By-laws are streamlined, shorter in length, and more focused on providing options for varying hospital needs. The Prototype By-laws are comprised of two parts: A Prototype Corporate By-law and a Prototype Board-Appointed Professional Staff By-law. Most hospital by-laws take this form, because corporate by-laws require less frequent updating and amendment than the professional staff by-laws.

The new Prototype Corporate By-law deals with the hospitals’ administrative functions and the new Prototype Board-Appointed Professional Staff By-law addresses appointment and privileging of medical, dental, midwifery and extended class nursing staff within the hospital.

#### **5. What is the purpose of the Notes Section at the end of each Prototype By-law?**

The Prototype By-laws offer sufficient flexibility to allow each hospital to adapt them to their specific needs. As a result, a number of options are provided within relevant sections of the Prototype By-laws for hospitals to choose from.

Where a number of different options are presented, rationale and commentary is presented in the Notes to assist hospitals in determining which option is most suitable given the hospital size, service characteristics, governance structures and community needs.

Hospitals are encouraged to consider the options and rationale for the specific provisions of the By-law that they are considering for adoption. It is important that the rationale and commentary be considered in conjunction with current and past hospital practice.

#### **6. Will the Prototype By-laws be available online and will hospitals be able to customize depending on their unique characteristics?**

In addition to hard copy, the Prototype By-laws are available online at [www.oha.com](http://www.oha.com), in the Toolkit section of the Library under the “Knowledge Centre.” Hospitals are able to download and modify the online version and use the sections most relevant to their organizations.

#### **7. Are hospitals required to use the Prototype By-laws?**

Prototype By-laws are developed as a best practice guide for hospitals to use in amending their own by-laws and generally reflect relevant legislative amendments and contemporary and evolving hospital practice. While hospitals are not required to use the Prototype By-laws, we are nonetheless encouraging all hospitals to adopt the By-laws to the greatest extent possible, and demonstrate continued leadership in improving hospital governance practices.

## 8. How will the OHA be assisting hospitals in implementing the new Prototype By-laws?

In the time ahead, the OHA will be providing its Members with the communication tools they need to support the adoption of the OHA's Prototype Corporate and Board-Appointed Professional Staff By-laws, including template opinion editorials, outlines of suggested communications tactics, frequently asked questions documents, etc.

### Corporate By-law

## 9. Why has the Prototype Corporate By-law been updated?

The OHA's goal when developing the Prototype Corporate By-law was to create a tool consistent with modern governance practices and the OHA's *Guide to Good Governance*, the *Corporations Act* and *Public Hospitals Act*, and aligned with recommendations made by Ontario's Auditor General, specifically regarding skills-based boards, and the importance of recruiting board members with the required competencies to avoid conflicts of interest.

## 10. How was the Prototype Corporate By-law developed?

Prior to finalization of the document, feedback and input on a comprehensive draft of the Prototype Corporate By-law was sought from a number of reviewers with experience and expert knowledge of good governance practices.

## 11. What are the key elements of the Prototype Corporate By-law?

The new Prototype Corporate By-law offers sufficient flexibility to allow each hospital to adapt them to their specific needs. As a result, a number of options are provided within relevant sections of the By-law for hospitals to choose from, recognizing that hospitals vary in size, service characteristics and community needs.

*Key provisions/elements of the 2010 Prototype Corporate By-law include the following:*

- **Board Composition and Recruitment** – The Prototype Corporate By-law contemplates twelve (12) elected Directors (and four (4) *ex-officio* Directors), and provides that the Board should adopt a statement of Board Roles, Responsibilities and Functions that describe the role of the Board in its key performance areas, including specific wording regarding the board's role in quality.

The Prototype Corporate By-law contemplates that a transparent recruitment process or policy will be adopted by the Board and sets out criteria for hospitals to consider developing such a process to ensure that the Board is comprised of individuals who have the necessary skills, competencies, experience and independence to collectively perform the roles and responsibilities of the Board.

- **Corporate Membership** – The Prototype Corporate By-law provides for a model of Membership where the Directors are the only voting members. The Notes to the Prototype Corporate By-law set out language for three additional options for membership: 1) Two Classes of Members – Voting and Non-Voting (Advisory); 2) Limited Constituency Model; and 3) Membership Extended to “Related” Organizations.
- **Board Committees** – The Prototype Corporate By-law sets out general provisions for the Board to establish Committees from time to time, and to determine the duties of such Committees, without identifying specific Committees that should be established. The Notes suggest that the Board may want to include Committee Terms of Reference as set out in the OHA’s *Guide to Good Governance*.

## **12. Why is the Community Membership Model not included in the Prototype Corporate By-law?**

Modern governance practice suggests that hospital membership should be structured so as to ensure board stability and quality and minimize the risk of single-issue or “special interest” groups destabilizing the board.

This was reinforced in the 2008 Auditor General’s Annual Report (Report), which included a review of hospital board governance practices and oversight processes. The Report specifically referred to literature on best practices that suggests that “a community advisory committee can provide hospital board with community input without the need for community shareholder members”.

The Report suggested that in certain circumstances, community “shareholder” members may impede the board’s decision-making ability. The Report referenced work commissioned by the Ministry, which indicated that the ability of hospital boards to make difficult decisions may be hindered if directors elected by community “shareholder” members:

- have a specific agenda;
- lack the necessary knowledge, skills, and experience; or
- become involved in disputes with the community “shareholder” members, which may impact the director’s continuing membership on the board.

## **13. Won’t moving from a community-based membership model be difficult for hospitals to implement?**

Whether or not a hospital has community members, the hospital relationship with its community and the confidence of the community in the board are important factors in the hospital’s success in delivering its mission. Hospitals considering moving away from a community-based membership model need to be especially mindful of this and should ensure that they have robust structures in place to engage the community.

All boards must focus on high-quality governance and community engagement. There are a number of different options for achieving this goal, for example, adopting a Nomination Policy/Process that is open and transparent where community members are involved in the nomination process.

In order to recognize the important role of community engagement even where members of the community do not have voting rights, consideration should be given to creating a community advisory committee to the board. A community advisory committee could consist of community representatives which are either appointed by the hospital board or alternatively are voted on or appointed by the hospital community.

Other mechanisms for community engagement include open board meetings and/or town hall meetings; robust annual reporting; regular written communications with the community and the municipality; and processes and protocols to engage community leaders. Further options for engaging your community can be found at [www.epicontario.ca](http://www.epicontario.ca).

#### **14. Does the proposed membership model impact hospital transparency and accountability?**

No. Ontario's hospitals are already the most transparent and accountable in Canada. They participate in comprehensive accreditation processes, are subject to Hospital Service Accountability Agreements, and are audited on a regular basis by Ontario's Auditor General. They also provide extensive public data on their finances, patient safety performance and patient satisfaction through consumer-oriented websites like myhospitalcare.ca. Ontario's hospitals either initiated or played a key role in shaping every one of these activities.

Most recently, in October 2009, to help bolster public trust and confidence in hospitals and the broader public sector, the OHA proposed that the Government of Ontario extend the province's *Freedom of Information and Protection of Privacy Act* (FOIPPA) to the hospital sector.

#### **15. The Corporate By-law defines "Chief Executive Officer" (CEO) to include the administrator of the hospital and the President and CEO. Must the same individual hold the titles of "President" and "CEO"?**

No. While the common approach is to use the titles "President" and "CEO" for the individual who is also the Administrator, as defined in the *Public Hospitals Act*, these titles can be held by different individuals. The *Corporations Act* requires that each corporation have a President, and that the President must be a director.

The *Corporations Act* also specifically provides that the duties of the President of the corporation may be assigned to the Chair, if the corporation decides it wishes to have a Chair (who must also be a director). As such, a hospital could assign the title of "President" to the "CEO" or the "Chair" of the corporation. The Prototype Corporate By-law assigns the titles of President (and Administrator) to the CEO and provides that the individual is an *ex-officio* member of the Board.

## **16. How can we begin to implement the Prototype By-laws in our hospital?**

The OHA recognizes that the adoption of the Prototype By-laws may be challenging for some hospitals, and will require consultations with numerous stakeholders including staff, physicians, volunteers, members, and the broader hospital community. We would encourage hospitals to start these consultations early and be as open and transparent as possible in these discussions as to the merits of moving forward in the adoption of the new Prototype By-laws and the timeframe and process in which the hospital plans to proceed.

### **Prototype Board-Appointed Professional Staff By-law**

## **17. Why has the Prototype Board-Appointed Professional Staff By-law been updated?**

The Coroner’s Jury in the Dupont/Daniel Inquest recommended that “all public hospitals conduct a review of their By-laws, to ensure that their Medical Staff Governance By-laws and other staff policies are updated.”

Consistent with this recommendation, and further to our comprehensive review of the 2003 OHA/OMA Prototype By-laws and relevant provisions of the *Public Hospitals Act*, the OHA identified a range of new and modified provisions necessary to bring the Prototype Professional Staff By-law in line with modern good governance practices.

## **18. How was the Prototype Board-Appointed Professional Staff By-law developed?**

A Working Group provided OHA staff with direction respecting the development of the Prototype Board-Appointed Professional Staff By-law. Working Group Members include hospital CEOs, Chiefs of Staff, Vice President Medicals, Chief Nursing Executives, and in-house legal counsel.

The OHA also sought the assistance of hospital in-house and external legal counsel to identify areas of interest and/or issues that should inform the development of the Prototype Board Appointed Professional Staff By-law.

## **19. What are the key elements of the Prototype Board-Appointed Professional Staff By-law?**

The new Board-Appointed Professional Staff By-law offers sufficient flexibility to allow each hospital to adapt them to their specific needs. As a result, a number of options are provided within relevant sections of the By-law for hospitals to choose from, recognizing that hospitals vary in size, service characteristics and community needs.

While the Board-Appointed Professional Staff By-law provide a broad framework within which a hospital relates to its board-appointed professional staff, hospitals are encouraged to develop their own policies and procedures, built on the By-law, that set out explicitly how board-appointed professional staff will be engaged.

*Key provisions/elements of the 2010 Board-Appointed Professional Staff By-law include the following:*

- **Professional Staff (Designation and Categories)** – Medical Staff, Dental Staff, Midwifery Staff and Extended Class Nursing Staff (non-employed) are defined as "Professional Staff" and are generally treated in the same manner. The Prototype By-law provides for one process for applications/appointment, categories of staff, revocations/suspensions and duties, but distinguishes between the various certificates and licences that might need to be provided.
- **Appointment and Privileges** – Consistent with the jury recommendations in the Dupont/Daniel Inquest, a number of additions have been suggested in the Notes to the Board-Appointed Professional Staff By-law which hospitals could include in their applications for appointment and re-appointment (i.e. pending or ongoing disputes with other hospitals, information regarding the applicant's health that may impact on the ability to practice or staff or patient safety).
- **Monitoring, Suspension and Revocation** – The Board-Appointed Professional Staff By-law gives authority to the CEO (in addition to the Chair of the Medical Advisory Committee) to temporarily restrict or suspend privileges. The circumstances in which temporary suspension can occur are expanded beyond "exposing patients to harm or injury" to include situations where the member's conduct, performance or behaviour exposes (or is reasonably likely to expose) any patient, health care provider, employee or other person at the hospital to harm or injury.
- **Leadership Positions** – There is currently no legislative requirement for hospitals to have a Chief of Staff position. Regulation 965 under the *Public Hospitals Act* requires that, in the case of a hospital whose By-laws provide for the position of Chief of Staff, the board should appoint the Chief of Staff as Chair of the Medical Advisory Committee, and in the case of a hospital whose By-laws do not provide for the position of Chief of Staff, the board should appoint a member of the Medical Advisory Committee to be Chair of the Medical Advisory Committee.
- To reflect this legislative requirement, the By-law sets out the duties of the Chair of the Medical Advisory Committee. Under Regulation 965, the Chair of the Medical Advisory Committee is responsible for making recommendations to the board on the "quality of care provided in the hospital by the medical staff, dental staff, and midwifery staff and by the extended class nursing staff".
- Hospitals currently operate under a number of different leadership models based on various factors including hospital size, geographic area, and community characteristics. These include: 1) Chief of Staff Model; 2) Chief of Staff and Vice President Medical Model; and 3) Chair of Medical Advisory Committee and Vice President Medical Model. The common factor within all models is that each hospital is required by Regulation 965 under *Public Hospitals Act* to have a Chair of the Medical Advisory Committee.

- While some hospitals have a Chief of Staff who sits as Chair of the Medical Advisory Committee, others operate under different leadership models. Significant detail around the different leadership models is set out in *Appendix IV (Leadership Positions)* to assist hospitals in determining which model fits most appropriately within their organization.
  - Appendix IV sets out in detail the other duties and responsibilities that could be assigned to the appropriate person (Chief of Staff, Vice President Medical, Director of Care), who would report to, and have their performance review carried out by the CEO in respect of these duties. Appendix IV also sets out considerations for hospitals about how to best structure this reporting relationship when the two roles are held by the same person, and the delineation between the reporting to the Board (as Chair of the Medical Advisory Committee) and the CEO (for other duties and responsibilities).
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