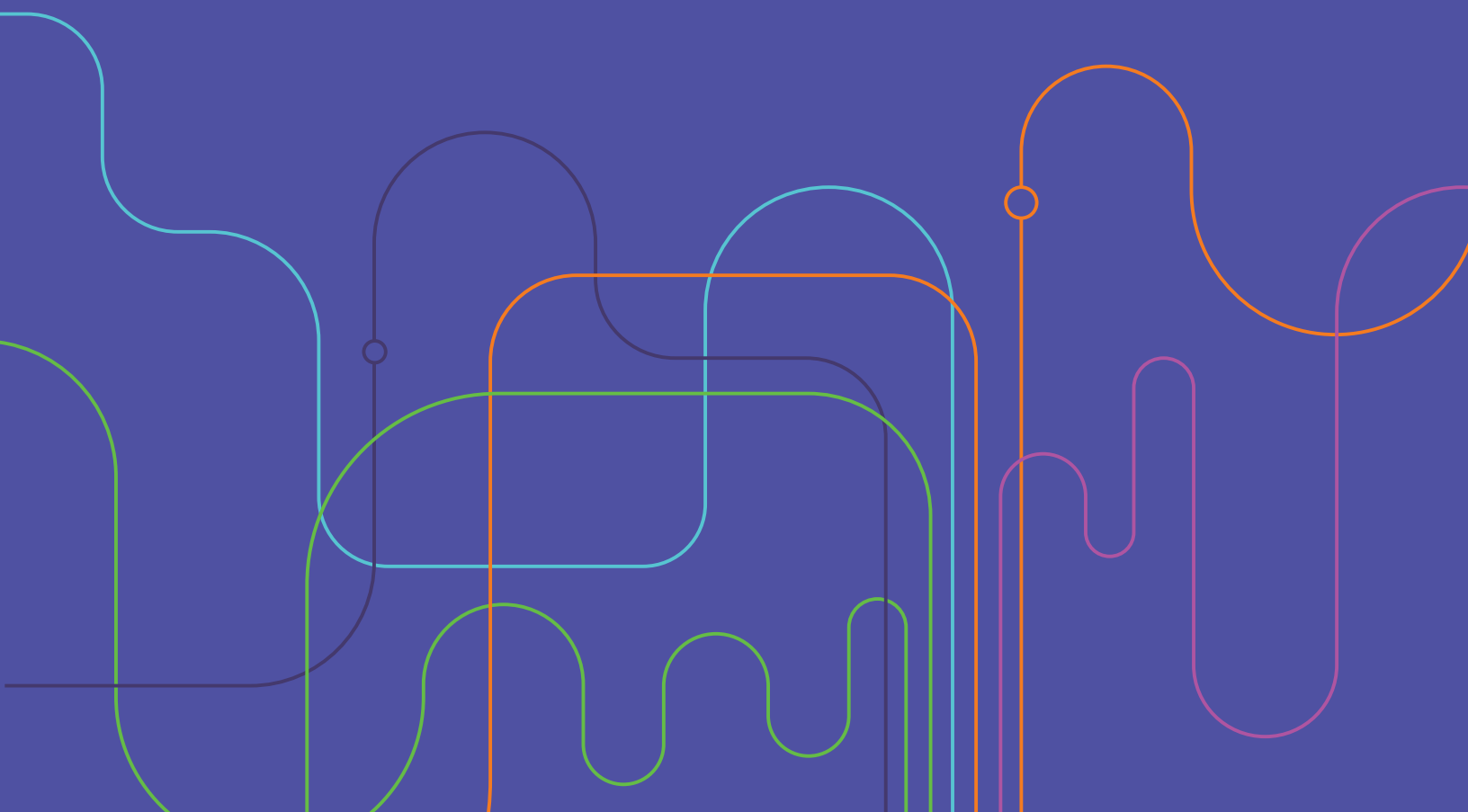


Primer: Updates to the Hospital Prototype Board-Appointed Professional Staff By-Law

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The Ontario Hospital Association (OHA) and Ontario Medical Association (OMA) have undertaken a comprehensive review and update of the Hospital Prototype Board-Appointed Professional Staff By-Law, which was last reviewed in 2011. This version of the By-Law reflects amendments to the *Hospital Management Regulation*, changes in hospital practice, and lessons learned from the COVID-19 pandemic. It also reflects leading practices for the professional staff and medical leadership positions. In addition, the By-Law has been updated to apply plain language drafting principles. A brief summary of these updates is provided below.

The By-laws should be read as a companion document to the *OHA Professional Staff Credentialing Toolkit*, first published in 2012 and revised in 2021. The Toolkit is a complementary resource to the By-laws, intended to provide further context on legal and policy processes around privileging of professional staff.

The Hospital Management Regulation

In 2011 and 2012, the *Hospital Management Regulation* was amended to enable nurses in the extended class to admit, treat, and discharge hospital patients. The By-Law reflects these changes by replacing references to “out-patient” with “Patient” in the definition of “Extended Class Nursing Staff” (Section 1.1). The effect of this change is that the extended class nursing staff, previously limited to providing certain services to out-patients only, are now authorized to practice independently within their scope on both in-patients and out-patients of the hospital.

In addition, the definition of “Dental Staff” has been updated to mirror the definition provided in the *Hospital Management Regulation*, which references oral and maxillofacial surgeons.

Changes in Hospital Practice

Pursuant to the *Hospital Management Regulation*, a hospital must have a Board-appointed Chief of Staff or a Chair of the Medical Advisory Committee (“**MAC**”). The By-Law implements a chief of staff model, where the board of directors of the corporation (“**Board**”) appoints a chief of staff, who is the *ex-officio* chair of the MAC. Alternatively, a hospital may appoint a Chair of the MAC together with another senior leadership role. If taking this approach, the references to Chief of Staff should be replaced with references to Chair of the MAC, together with certain other drafting changes to ensure alignment.

Provisions relating to the “Professional Staff Human Resources Plan” were revised to provide maximum flexibility to hospitals to determine their own processes in developing this plan.

In addition, provisions relating to Honorary Staff have been removed from the By-Law. This is because Honorary Staff are not a professional staff group, do not have privileges, and do not provide patient care. Hospitals may wish to address the honouring of such individuals through hospital policy and practice.

Lessons Learned from COVID-19

The By-Law reflects lessons learned from the COVID-19 pandemic and enables the MAC (or any subcommittee of the MAC) and the professional staff to hold meetings by telephonic or electronic means (Sections 9.6 and 10.5).

Professional Staff

The By-Law introduces several new provisions affecting the professional staff, which reflect leading practice. Section 2.1 enables the MAC and the Chief of Department, after consulting with the professional staff, to make policies applicable to the professional staff that are consistent with the By-law and Board-approved rules and policies. This change supports the ability of the MAC and medical leaders to have clear and explicit authority to develop their own rules (e.g. required attendance at Department meetings). The

By-law also clarifies in Section 1.4 that, where the Board or MAC is required to consult with the professional staff, it is sufficient to receive and consider the input of the professional staff officers (which include the officers set out in section 11.1(2) of the By-Law).

The By-Law introduces a new provision that requires the Board to approve the prescribed form of application, re-appointment, and change in privileges for the professional staff after receiving the recommendation of the MAC (Section 3.4(4)). In addition, the relevant Chief(s) of Department are required to review and make recommendations concerning each application for reappointment within that department to the MAC in accordance with a Board-approved performance evaluation process (Section 3.7(3)). The By-Law also requires that the Board consider the recommendation of the MAC before dividing a department into divisions (Section 7.2).

The By-Law also builds on the duties of the professional staff by requiring each professional staff member to disclose to the Chief of Staff and Chief Executive Officer: (i) the commencement of any investigation or proceeding that would be required to be disclosed by By-law, the credentialing policy, and/or the reapplication process; or (ii) any change in the member's licence to practice or in their professional practice liability coverage (Section 6.7). In addition, if the Chief of Staff and/or Chief of Department request(s) a meeting with a professional staff member, the By-Law requires that the professional staff member attend the meeting within 14 days and produce any documents requested for discussion at the meeting. The professional staff member is entitled to bring a representative to the meeting (Section 6.7(3)). Professional staff members who wish to resign or retire from active practice are also required to provide 90 days' written notice to the Chief Executive Officer (Section 3.11). Further, the By-Law enables the Chief Nursing Executive to monitor and review any aspect of patient care or professional staff member conduct where the care or conduct relates to the extended class nursing staff (Section 4.1).

Medical Leadership Positions

The By-Law has been updated to reflect leading practices for medical leadership positions. These updates include introducing terms and maximum terms for medical leader appointments. Pursuant to Section 8.1, the appointment of a medical leader will be for a term of up to five years (subject to annual confirmation by the Board). In addition, the maximum number of consecutive years of service of a medical leader is ten years. However, following a break in continuous service of at least one year, the same person may be reappointed. While provisions on terms and maximum terms reflect leading practices, they are not legally required. Each hospital will need to make a determination based on their own circumstances. Hospitals will also need to consider requirements set out in affiliation agreements (if any).

The By-Law also includes new provisions designed to enhance flexibility. Under Section 8.1, the Board may appoint an individual on an acting or interim basis where there is a vacancy in any medical leader office or where the individual holding any such office is absent or unable to act. Further, if the term of office of any medical leader expires before a successor is appointed, the Board may extend the appointment of the incumbent. The By-Law also clarifies that the Board may revoke any appointment to a medical leader office at any time.

Drafting Changes

The By-Law has been revised to apply plain language updated drafting principles, which include:

- using active sentences;
- removing legalese;
- eliminating duplication and using fewer words;
- adding definitions for clarity;
- ensuring consistency in language; and
- implementing gender neutrality (they, their, them versus he or she).