



Memo

To: Chief Executive Officers, Chief Operating Officers, Chiefs of Staff, VPs Medicine of Ontario's Hospitals

From: Dykeman Dewhirst O'Brien LLP

Date: February 19, 2010

**Re: Amending Your Hospital By-laws:
What to do with the new OHA Hospital Prototype By-laws**

You may be wondering what to do with your by-laws now that the Ontario Hospital Association has released its new Hospital Prototype Corporate and Board-Appointed Professional Staff By-laws.

Having heard from a number of our clients, we thought we would clarify a few common misunderstandings about the new OHA Prototype By-laws.

Do we have to update our by-laws?

No. However, if you have not reviewed your by-laws in the last few years it is a good time to do so. The new OHA Prototype By-laws have taken into consideration changes to legislation, the new relationships between hospitals and the Local Health Integration Networks, best practices in governance and recommendations from the Dupont-Daniel inquest.

How often should we update our by-laws?

We generally recommend that hospital by-laws have a thorough review at least every 4 years.

A hospital should more frequently update its by-laws if:

- There are changes in legislation (such as to the *Public Hospitals Act* or *Corporations Act* or if new legislation is introduced that has a significant impact on the hospital sector)
- New best practice standards are released (and the OHA Prototype By-laws constitute new best practice)
- Actual hospital practices are not reflected in the by-laws

Do our by-laws have to match the OHA Prototype By-laws?

No. In fact, some aspects of the OHA Prototype By-laws may not reflect your desired hospital practices. For example, **you do not have to:**

- Separate your Corporate By-law and Professional Staff By-law
- Restrict terms for Board members to 6 years total
- Limit community participation from your membership structure
- Rename your Medical Staff By-laws to Professional Staff By-laws (although, it might be clearer to do so in order to include members of the Dental, Midwifery and Extended Class Nursing professions)

The OMA did not jointly publish these By-laws with the OHA – is that significant?

These By-laws reflect the OHA's position and are not endorsed by the Ontario Medical Association. The OMA has indicated that it is reviewing the Board-Appointed Professional Staff By-laws, but has not yet posted a public position. We will continue to monitor this issue.

Many of the recommended changes to those by-laws come from the coroner's recommendations in the 2007 Dupont-Daniel inquest. Many hospitals in Ontario have already updated their by-laws to reflect those recommendations. As a reminder, the Prototype By-laws and most existing hospital by-laws provide the Professional Staff and Medical Advisory Committee with an opportunity to comment on changes to the Professional Staff By-laws. If that is the case with your hospital, and if you do choose to adopt the OHA's Board-Appointed Professional Staff By-laws, there may be issues raised by members of your Medical Staff or Professional Staff about the necessity of incorporating the OHA's recommended changes in the context of your community.

Are there additional issues we should be adding to our Board agenda?

Yes. You will note that the OHA Prototype By-laws are pared down significantly from the previous version. While this makes them a more user-friendly document, it also underscores that a hospital's by-laws do not create an entire "code" between the hospital and its Professional Staff, in particular. Board-approved policies to fill in the "gaps" will be more important than ever. For example, the circumstances under which a Board approves a Professional Staff member's leave of absence are left silent in the by-law, but the legal duties of procedural transparency and fairness mandate that there be a written process and criteria upon which the board based its decisions. This is also a good time to review your Professional Staff Rules and Regulations to ensure consistency with your by-laws. We will keep you updated on additional policies that may be required to supplement the prototype by-laws.

DDO Health Law Services

By-law review is one of the cornerstones of our legal practice. We have extensive experience drafting and reviewing hospital by-laws. We would be happy to assist you in a review of your Corporate or Professional Staff By-laws and to update your Professional Staff Rules and Regulations and policies. For more information, please contact any one of the lawyers listed below:

Mary Jane Dykeman
416.967.7100 x 225
mjd@ddohealthlaw.com

Kate Dewhirst
416.967.7100 x 226
kd@ddohealthlaw.com

Kathy O'Brien
416.967.7100 x 227
kob@ddohealthlaw.com