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Bylaws Best Practices for Today

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Are your medical staff bylaws a help or a hindrance? If they resemble dusty archaeological documents, you can be sure they are hindering your medical staffs ability to function effectively while staying compliant.

Many medical staff bylaws were written in the distant past and are only occasionally dusted off and modified, either to accommodate a new accreditation requirement or to address a current controversy involving the medical staff. Individuals who participated in crafting bylaws language are often highly invested in the resulting document and sometimes resist attempts to modernize it. Thus, many medical staffs are organized and function much as they have for decades, despite the dramatic changes that have occurred in healthcare.

Today, the healthcare industry and society in general demand more of the medical staff than ever before, yet physicians have less time than ever to devote to medical staff activities. The challenge is to create an effective and efficient medical staff structure that burdens physicians as little as possible.

To accomplish this, physician leaders in hospitals nationwide are redesigning the way they tackle self governance, credentialing, peer review, communication, and medical staff administration. As they do, they must revise their bylaws to reflect the changes they initiate because bylaws serve as a blueprint and a road map for the medical staffs exercise of the powers delegated to it by the governing board.

The Greeley Company cannot provide a model set of bylaws because each document must mirror the uniqueness of the medical staff for which it is written, but it can provide some helpful pearls. The saying “form follows function” applies here. Once a medical staff decides how it wants to function, it can incorporate appropriate changes into its medical staff bylaws.

When written well, bylaws and associated policies are user-friendly documents that:

- Clearly define the purpose of the medical staff
- Establish effective and efficient medical staff structures and processes
- Recognize and protect physicians’ rights to self-governance and due process
- Promote good citizenship by specifying the obligations and duties of the medical staff
- Enhance quality of care through excellent credentialing and performance improvement processes
- Achieve excellent provider performance by setting unequivocal expectations for clinical care and professional behavior
- Clearly delineate the investigation and fair hearing processes

Despite hospitals’ best attempts, medical staff bylaws are rarely user-friendly documents. Physicians new to a medical staff are often required to sign a statement that they have read and agree to abide by the bylaws and associated medical staff manuals and policies. However, few physicians have the time or motivation to weed through the numerous pages of cumbersome language that often characterize these documents.

Hospitals spend significant sums of money, devote countless hours of physicians’ time, and employ numerous attorneys and consultants in an attempt to perfect, refine, and improve their bylaws. Still, bylaws are often overrun

with complex terms, definitions, and jargon that have little to do with the provision of quality patient care. For many physicians and medical staff leaders, the word “bylaws” is equivalent to “bureaucracy.”

Medical staff bylaws also have legal implications for physicians and hospitals. If the medical staff does not follow governing documents meticulously, or if the documents contain ambiguous or sloppy language, disputes can eventually turn into lawsuits. When bylaws are poorly constructed, they can impede cooperation and disrupt the smooth coexistence of the hospital and medical staff. One benefit of well-written bylaws—like any good contract or compact—is that they provide clear guidance to all parties that must operate in compliance with them. In addition, carefully thought-out and drafted medical staff bylaws help organizations create an environment in which physician hospital collaboration can be successfully maintained.

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UNDERTAKING A BYLAWS REVIEW

The importance of medical staff bylaws should compel every hospital and its medical staff leaders to ensure that bylaws are adequate, accurate, and compliant with applicable requirements. The medical staff should conduct a thorough review of these documents periodically to determine whether they:

- Accurately reflect the medical staffs structures and processes
- Incorporate recognized best practices for medical staff functioning and structure
- Are organized into a user-friendly and flexible set of documents
- Adequately address potential future conflicts
- Comply with regulatory standards

Keep in mind that your organization should review the bylaws annually and whenever a regulatory body introduces a new standard or makes changes to an existing standard to ensure compliance. However, the medical staff can conduct a stem-to-stern assessment less frequently. For example, some medical staffs automatically conduct a comprehensive bylaws document review every three to five years. Others undertake this task only when they decide it is necessary to take a rigorous look at, and possibly redesign, the medical staff structure and processes to ensure that they perform efficiently and effectively.

A general rule of thumb is to not allow more than three to five years to pass between rigorous assessments. Unfortunately, too many medical staffs neglect to commit to this time frame. Every year, the number of pages in the document grows as new additions are layered on top of old and often unnecessary provisions. During a casual read-through of the bylaws, one is likely to identify medical staff “fixes” that were added to address problems that last surfaced ages ago.

The result is an unwieldy and ossified document that hinders the effectiveness of a modern medical staff in a rapidly evolving healthcare environment. If this describes your bylaws, it may be time to consider a comprehensive review and potential top-to-bottom overhaul.

RESPONSIBILITY FOR THE BYLAWS REVIEW

A designated medical staff professional should keep the medical executive committee (MEC) up to date on changes to regulations and standards that might affect the bylaws. Some medical staffs have a standing bylaws committee, and this group can vet suggestions for appropriate bylaws revisions. However, medical staff leadership (with the endorsement of the MEC) can and should make the decision to undertake a thorough review of the medical staffs governing documents. Keep in mind that this activity will inevitably be tinged with organizational politics and should be carefully planned.

Also, keep in mind that bylaws committee members may have a vested interest in the old documents. In some organizations, the chair of the bylaws committee has held that position for many years and therefore may have an ownership mentality regarding the current bylaws; he or she may resist significant changes to the documents. At the same time, this individual likely has vast institutional knowledge and understands the reasoning behind why the medical staff chose to make certain additions to the bylaws. Finding the right balance between keeping what is valuable from the past and incorporating new best practices is one of the greatest challenges in any bylaws rewrite.

To avoid some of these issues, the MEC may want to consider appointing a special task force to undertake the bylaws review. Appointees can be chosen for their knowledge of medical staff affairs, ability to craft good bylaws language and to achieve medical staff buy-in, statesmanship, and other critical qualities.

BYLAWS DECISION POINTS

When crafting new bylaws, medical staffs are faced with many decision points. It would be impossible to discuss all of them in this paper, but the following is an example of one such decision point regarding potential sample bylaws language.

DETERMINING THE APPROPRIATE NUMBER OF MEDICAL STAFF COMMITTEES

Why do some medical staffs have up to 20 standing committees? Simply put, they rush to create a new committee every time The Joint Commission or other accrediting body publishes another standard that requires medical staff participation.

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Originally, the MEC performed all of the functions required by the medical staff. However, as medical staff requirements and responsibilities grew, the MEC began to establish standing subcommittees to accomplish various tasks. If a streamlined infrastructure is the goal, a medical staff with a strong MEC, credentials committee, and interdisciplinary quality/peer review committee can carry out all the medical staffs work. However, various accreditation standards, regulations, laws, and professional organizations (e.g., medical societies) may require medical staffs to establish certain committees. For example:

- To be accredited by the American College of Surgeons as a trauma or cancer center, organizations must establish a trauma or cancer committee
- To be able to grant category 1 continuing medical education (CME) credits, a facility must establish a CME committee
- If a medical center educates and trains residents, it must establish a graduate medical education committee
- If a facility is involved in research, it must establish its own, or leverage an existing, institutional review board

Although these are the most commonly required committees, some state laws may require additional committees (e.g., a safety or pharmacy committee). All other committees are optional, and you should consider keeping them only if they provide value to the organization.

Traditionally, medical staffs have appointed a nominating committee that only convenes to develop a ballot prior to electing medical staff officers and other leaders. Because the task of finding, educating, training, and retaining excellent medical staff leaders is becoming increasingly important, some medical staffs are now establishing an ongoing leadership and succession committee. This committee develops selection criteria, outlines a leadership training process, and works to create a pool of future leaders. This committee also periodically assesses the performance of medical staff leaders, provides feedback, recognizes good performance, and identifies opportunities for improvement when appropriate.

Below is some sample bylaws language to govern a leadership and succession committee:

1. COMPOSITION. The leadership and succession committee shall consist of five members of the medical staff, including the president and immediate past president of the medical staff and three others appointed by the president of the medical staff. The chair shall be the immediate past president of the medical staff. Except for the president and immediate past president, members will serve three-year terms, and one of the appointed members will rotate off the committee each year. All members should be active members of the medical staff for at least three years and be in leadership positions, such as a department or committee chair, medical staff officer, or MEC member, during at least part of their term on the committee.

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2. RESPONSIBILITIES. The leadership and succession committee shall:

- Develop criteria for leadership positions that include tenure, leadership training, previous experience in leadership positions, and character
- Provide an annual slate of nominees for the elected medical staff positions
- Provide an annual list of potential leaders
- Define a process for evaluating current leaders (e.g., department chairs, committee chairs, medical staff officers, and MEC members) and potential leadership candidates
- Outline a plan and process for developing potential leaders
- Submit recommendations for medical staff committee chairs based on the potential leaders' needs for development and readiness to serve (the president of the medical staff will consider these recommendations for committee chairs but will not be bound by them)
- Develop position descriptions for the officers
- Report twice per year to the MEC

Many committees that have been historically organized by the medical staff function just as well (or better) as multidisciplinary hospital committees with designated physician leadership or participation. Physician leaders are appointed by the president of the medical staff to fulfill the medical staff functions of the hospital-based committees. This seems to work well for committees that address blood usage, utilization review, medical records, ethics, pharmacy/therapeutics, and infection control.

For example, a medical staff ethics committee could become a hospital committee with physician representation. Under this structure, the MEC would no longer be directly accountable for that committee's functions, but physician representatives on the committee would keep the MEC abreast of important issues. Although the medical staff must play a role in a wide variety of hospital functions—such as blood-usage monitoring, participation in ethical decision-making, selecting formulary drugs, and adopting infection control policies—it need not manage a long list of committees to serve those purposes. Another alternative to medical staff or hospital committees is to enlist the services of designated physician liaisons, advisors, or experts.

For example, the medical staff could replace a long-standing medical staff infection control committee with a physician advisor who meets regularly with the hospital's infection control coordinator to address important issues. This individual would report periodically and as necessary to the MEC (or medical staff quality committee), eliminating the need for a group of physicians to take the time to attend regular committee meetings. Consider addressing functions such as blood-usage monitoring or utilization review in this way as well.

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Other medical staff committees need not be standing committees. Instead, they could function on an ad hoc basis. A bylaws committee might be assembled whenever there is a perceived need to review or modify the medical staff governing documents. A physician advocacy/impaired physician committee could meet only as needed when a matter of physician health, well-being, or impairment arises. A joint conference committee of the medical staff and board might meet on an ad hoc basis only when the board is considering acting in a manner contrary to a recommendation made by the MEC or when a collaborative discussion of controversial topics is needed to reduce potential conflict between the medical staff, senior management, and the governing board.

The MEC is ultimately accountable for ensuring that all medical staff functions are achieved. It can accomplish its work through whatever committee infrastructure it deems most efficient. Given the extreme demands on physicians' time and the difficulty many staffs encounter trying to get physicians to attend meetings, less may be more when it comes to establishing a committee infrastructure.

WHAT SHOULD BE IN THE BYLAWS?

A battle continues to rage over what should be kept in the bylaws and what can be kept in associated manuals and policies. Some protagonists in this argument believe that physicians' rights are best protected by placing as much as possible in the bylaws. Many believe that the bylaws function as the contract between physicians and the hospital, and in many states, this is the law. The bylaws are the proper place, they argue, for all things that could affect physicians' practices, especially those items that might restrict their clinical activities or their ability to earn a living.

Although this approach is valid, it fails to recognize that the bylaws are difficult to change. They serve as the constitution of the medical staff, and they change infrequently and only when change is desired by a majority of those who are governed by the constitution. However, healthcare is changing rapidly, including regulatory requirements and evolving best practices for credentialing, peer review, and competence.

The goal for individuals drafting bylaws should be to strike the right balance between these two perspectives. Documents describing physicians' rights, including a physicians' bill of rights and the protections of due process, should be embedded in a document that is difficult to change. At the same time, rapidly evolving processes related to credentialing, privileging, and peer review should be in a document that can be changed with a vote of the MEC, without having to appeal to a majority of voting medical staff members.

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ENABLE THE CREATION OF NEW BYLAWS

Careful vetting of current bylaws and thoughtful rewriting or reorganizing are only the first steps along the path to developing new medical staff governing documents. The next challenge is overcoming resistance to change. Remember, resistance to change is typically greatest in volatile times such as those we now face in healthcare.

Once a committee or task force recommends change, it should create and fully explain the new draft document to medical staff leadership. Buy-in of medical staff leaders is essential, and every effort should be made to achieve consensus at this level. The committee or task force should then develop a campaign to educate and win the acceptance of the general medical staff. This campaign can and should include town hall meetings, newsletters, presentations by leaders at department meetings, and one-on-one lobbying of those physicians most likely to resist change. The ultimate goal, of course, is to win the acceptance necessary to ensure that the bylaws can be modified under the amendment procedure in the current bylaws.

CONCLUSION

The 21st century will demand that practitioners change the way they deliver healthcare to patients. Hospitals are likely to continue their rapid pace of change, and the nature of the organized medical staff will have to change as well. If your medical staff bylaws are outdated and cumbersome, they may hobble your institution and its practitioners.

In our consulting work with medical staffs, The Greeley Company has always been impressed to see that revising bylaws is much more of a change management and redesign challenge than a clerical chore. When striving to achieve effective bylaws, we are well advised to keep in mind the wisdom of Albert Einstein: "Any intelligent fool can make things bigger, more complex ... It takes a touch of genius-and a lot of courage-to move in the opposite direction." Einstein also gave us the insight that "Everything should be made as simple as possible, but not simpler." Together, these are words to live by for all of us who endeavor to improve medical staff bylaws.

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The Greeley Company, a division of The Chartis Group, is a leader in healthcare consulting, education and interim staffing solutions, with unmatched experience in the areas of regulatory compliance, accreditation, bylaws and peer review, as well as credentialing and privileging. Greeley's mission is to help healthcare organizations improve efficiency, comply with regulations and standards, achieve practitioner engagement and alignment, and excel in delivering high-quality, cost-effective patient care. For more information, visit greeley.com.